made more progress than Hispanics since the 1960s in reducing their smoking initiation rates.

Smoking rates among Hispanic youth also are of great concern, as 19.4 percent of Hispanics aged 12-17 smoked cigarettes in the preceding year, according to the 1990 National Institute on Drug Abuse National Household Survey on Drug Abuse. This was less than the 25.9 percent of whites in the same age group, but considerably more than the rate of 9.8 percent for African-American adolescents.

Health Consequences of Tobacco Use

African-Americans:

African-Americans suffer from tobacco-related diseases at a higher rate than whites. African-American men and women have a higher incidence of respiratory system, esophagus and oral cavity cancers than do white men and women. They also experience excessive mortality for many tobacco-related cancers. In 1988, nearly 48,000 African-Americans died from preventable, smoking-attributable causes. Smoking-attributable deaths among African-American men (702.9 per 100,000) are more than double those among African-American women (231.5 per 100,000).

African-Americans have not only a higher death rate from cigarette smoking than whites, but have a greater loss of productive years of life. This is because African-Americans tend to become ill from smoking at younger ages than whites. The age-adjusted years of potential life lost (YPLL) attributed to smoking in 1984 was 8.14 for African-Americans and 3.81 for whites. In 1988, the YPLL before age 65 for African-Americans was twice that for whites, and before age 85 the YPLL was 52 percent higher than that for whites.

The percentage of lung cancer mortality attributed to smoking is 86.1 percent. The average lung cancer death rate from 1980 through 1987 for African-Americans was 2.3 times higher than for whites. Estimates are that from 1980 through 1990, lung cancer increased 98.6 percent for African-American females, 86 percent for white females, 31.8 percent for African-American males and 20.7 percent for white males. Lung cancer incidence and mortality are not expected to plateau for African-Americans and whites until after the year 2013. However, because of their higher smoking cessation rate, white male lung cancer mortality is expected to decline in the 1990s, with lung cancer mortality occurring later among African-Americans.

While African-Americans quit more frequently than whites, African-Americans are less likely than whites to remain smoke-free for one year or more. In 1987, the proportion of persons who have ever smoked cigarettes and who have quit smoking was 31 percent for African-Americans and 46.4 percent for whites.

Hispanics:

Several studies have documented a rising lung cancer rate among Hispanic males. For example, as reported in the *American Journal of Public Health* in February 1985, the Colorado Tumor Registry reported a 132-percent increase in lung cancer rates among Hispanic men between 1970 and 1980, compared to a 12-percent increase among white men. One of the study's co-authors, Al Marcus, a cancer specialist at UCLA's Jonsson Comprehensive Cancer Center, said, "There's an epidemic out there. And it hasn't received a lot of attention. There aren't a lot of people studying cancer among Hispanics."

As noted in *Marketing Disease to Hispanics*, published by the Center for Science in the Public Interest (1989), "Dr. John Samet of the University of New Mexico School of Medicine, one of the researchers who documented the increasing lung cancer rates in Hispanic males in New Mexico, said the higher rates are occurring because Hispanic men have started smoking more cigarettes in the last ten to 15 years. In the past, Hispanic smokers smoked far fewer cigarettes per day than their White or Black counterparts. One study, for example, found that Mexican-American males and females smoked about one-half a pack fewer cigarettes per day than Whites ... However, that now seems to be changing."

Intervention to Prevent Tobacco Use

Effectively intervening to prevent African-Americans, Hispanics and other minority population groups from starting or continuing to smoke is key to reducing the burden of tobacco-related death and illness. Pro-health, anti-tobacco efforts can be of either an advocacy or educational nature. Current and proposed interventions include:

- Increases in the tax, and thus price, of tobacco products;
- Bans or restrictions on tobacco advertising and promotion;
- Elimination of access by children and youth to tobacco products; and
- Educational efforts.

Price of Tobacco Products

Adolescents of all races generally have limited disposable income, and their ability to purchase cigarettes is sensitive to increases in the price of cigarettes. Indeed, research, and the experience of other countries, have shown that substantially increasing tobacco prices is the single most effective tool in reducing tobacco use, particularly among children and youth. For example, in Canada, where cigarette taxes were quadrupled between 1984 and 1991 so that they are now about seven times the cumulative (combined federal and state) level in the United States, teenage smoking has been cut by well over half. The US General Accounting Office estimates that if the excise tax on cigarettes were increased by just 21 cents per pack, the number of teenage smokers, white and African-American, in the United States would likely decline by over 500,000, resulting in 125,000 fewer preventable deaths.

Advertising and Promotion, Philanthropy, Influence-Peddling and Related Tactics

Tobacco companies aggressively target cigarette advertising and promotion at the African-American, Hispanic and other minority communities. The influence of advertising and promotion on

tobacco use and prevalence are important criteria in assessing how much control should be exercised on tobacco industry marketing campaigns. The impact of advertising and promotion on the behavior of media is also important. The decision of members of the media, sometimes under the influence of their tobacco advertisers, not to include articles related to tobacco and health directly inhibits the flow of information which might be used by readers to make truly informed choices about tobacco use. In addition, lack of exposure to tobacco-related articles about the health consequences or such issues as tobacco industry marketing campaigns can influence cultural norms that shape perceptions of tobacco use.

Tobacco and alcohol advertising have been the economic mainstays of the African-American press, for example, for decades. For example, in 1950, Philip Morris was attacked by the segregationist publication *White Sentinel* for being "the first cigarette company to advertise in the Negro press." African-American magazines receive proportionately greater revenues from cigarette advertising than do general market magazines. In 1987, tobacco advertisements accounted for 6.1 percent of the advertising in 166 consumer magazines, while the percentage was measurably higher in leading African-American magazines such as *Jet* (10.2 percent), *Essence* (9.2 percent) and *Ebony* (7.5 percent). In 1985, cigarette companies spent $3.3 million on advertisements in *Ebony* alone. Moreover, the tobacco industry heavily markets mentholated cigarettes—including Newport, Kool and Salem—to African-Americans. A comparison of tobacco advertising in magazines preferred by African-Americans and whites, for example, showed that the percentage of menthol cigarettes advertised in *Essence, Ebony* and *Jet* was 65.9 percent compared to 15.4 percent in general market publications *Mademoiselle, Time, Newsweek* and *People*.

Similarly, Philip Morris is now the leading advertiser in Hispanic markets, while RJR Nabisco is in the top 10.

Tobacco companies also support minority-targeted media by underwriting key portions of their annual conferences and conventions, including the dedication in 1987 of the Black Journalism Hall of Fame, the 1991 Mid-Winter Meeting of the Black Press and meetings of the National Newspaper Publishers Association. Tobacco companies also have supported journalism scholarships and internships and provided entry-level opportunities for African-Americans in communications.

Billboards advertising tobacco products are placed in predominantly African-American communities four to five times more often than in white communities. In 1987, for example, tobacco companies spent $5.8 million on advertisements on small billboards, often located close to sidewalks and storefronts, in predominantly African-American neighborhoods, accounting for 37 percent of total advertising in this medium. By comparison, African-Americans comprise approximately 12 percent of the overall population.

Special targeted advertising has been developed by tobacco companies for minority media. Paradoxically, most of this advertising has not been developed by minority-owned agencies. For example, in the past 20 years, only two African-American-owned advertising agencies have been assigned substantial cigarette billings: Burrell Advertising in Chicago, for Marlboro cigarettes in the early 1970s, and Mingo-Jones, for Omni cigarettes in the early 1980s. Burrell has since stated that it would not accept future cigarette accounts.

Data from the six major US cigarette manufacturers reveals that in 1990, United States cigarette advertising and promotional expenditures reached yet another all-time high of $3.9 billion, equivalent to nearly $11 million per day.

There are numerous linkages between social service and civil rights organizations within the African-American community and the tobacco industry. The reasons for this include, among others, the following:

- African-American organizations need money to run their operations, and the tobacco industry is a ready source of such funds, particularly given the decrease in federal and other governmental funds that are available to African-American institutions and organizations. For organizations involved in civil rights lobbying and/or controversial issues, the options for fundraising are even more limited.

- Long-standing personal friendships and business relationships between the traditional leadership of the African-American community and their counterparts in the major cigarette companies might be destabilized by organized African-American opposition to tobacco interests. For example, Vernon Jordan, former president of the National Urban League (NUL), is a member of the board of directors of RJR Nabisco. Margaret Young, the widow of former NUL president Whitney Young, is a member of the board of directors of Philip Morris. Raymond Pritchard, chairman and CEO of Brown & Williamson, serves on the board of directors of the NUL and is an advisor to Opportunities Industrialization Centers of America.

In a similar vein, the tobacco industry successfully targets the African-American and other minority communities by sponsoring entertainment, sporting and cultural events and political and literacy campaigns. For example, according to an internal Philip Morris company document shared by an anonymous source with Yorkshire Television of Great Britain and later with health advocates, in 1991 Philip Morris handed out $17,339,154 in "philanthropic" contributions. Among these contributions were a number of gifts to leading African-American organizations across the United States, a sampling of which follows:

NAACP (national office and various chapters)	$131,500
National Urban League (and chapters)	$329,070
African American Cultural Center	$ 10,000
Associated Black Charities	$ 10,000
Thurgood Marshall Scholarship	$ 50,000
Indiana Black Expo, Inc.	$ 67,500
National Minority AIDS Council	$ 10,000

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Black American Political Association	$ 8,000
Alvin Ailey Dance Theater Foundation	$200,920
African American Arts Festival	$ 20,000

Similarly, the Philip Morris document listed, among others, the following contributions made to Hispanic organizations:

National Council of La Raza	$175,000
Hispanic Policy Development	$ 50,000
Ballet Hispanico of New York	$ 3,920
Libertad, Inc.	$300,000
National Hispanic University	$ 30,000

The visibility of African-American elected officials and their power at the local, state and federal levels has led the tobacco lobby to provide strong financial support to these officials and their organizations. Substantial contributions have been made by tobacco interests on an annual basis to the Congressional Black Caucus and the National Black Caucus of State Legislators, as well as individual legislators. For example, according to the internal Philip Morris document cited above, Philip Morris alone gave the Congressional Black Caucus $86,108 in 1991. Similar support has been given to the Congressional Hispanic Caucus.

The tobacco industry's ability to mobilize key segments of African-American, Hispanic and other minority leadership, combined with the contributions to individual politicians and their organizations, makes it difficult for tobacco control advocates to gain support among minority legislative caucuses. However, there are individual elected officials who have been proactive on the issue of tobacco control. Rep. John Lewis (D-GA), one of the leaders in the successful legislative battle to ban smoking on virtually all domestic passenger airline flights, will not accept tobacco and alcohol-related contributions. Rep. John Conyers (D-MI) favors developing alternative funding for organizations such as the Black Congressional Caucus Foundation. According to Conyers, the extent of African-American mortality directly related to the use of tobacco and alcohol requires that leaders and organizations begin to reject tobacco contributions and support.

Access to Tobacco Products

A major contributor to tobacco use among children and adolescents of all ethnic and racial groups is their easy access to tobacco products. While virtually all states have laws prohibiting the sale of cigarettes to individuals younger than 18, not one state adequately enforces its minimum-age law. This failure to take seriously the minimum-age laws contributes directly to the fact that more than 3,000 children start to smoke every day in the United States. Pro-health federal legislators responded by persuading Congress to enact a compromise measure (dubbed the "Synar Amendment") in 1992, which becomes effective in October 1993, requiring all states to:

- Have in force a minimum-age law prohibiting the sale or distribution of any tobacco product to those under age 18; and
- Enforce the minimum-age law "in a manner that can reasonably be expected to reduce the extent to which tobacco products are available to individuals under the age of 18."

The new law prescribes that, if a state fails to satisfy the Department of Health and Human Services in annual reports that it has met this standard, the state will lose 10 percent of specified block grant funds in the first year, increasing to 40 percent in the fourth and all subsequent years.

The Synar Amendment is seen by health advocates as a step in the right direction. At press time, however, regulations implementing the measure have not been finalized, and uncertainty exists as to how the new law will affect states' enforcement efforts.

Educational and Related Interventions

The major tobacco control activities that have dominated the field have been those sponsored by the federal government through the National Institutes of Health and voluntary organizations such as the American Cancer Society (ACS), American Heart Association (AHA) and the American Lung Association (ALA), and have emphasized smoking cessation and mass media educational and school-based programs. These efforts model traditional health promotion goals that seek to alter health status by encouraging individuals to make lifestyle changes. The seven-year demonstration ASSIST initiative, a joint venture by the National Cancer Institute (NCI) and the ACS, includes as a part of its mission the training of personnel in health, education, worksite and community organizations in traditional cessation and health education programs. ASSIST's emphasis, however, is on policy and media advocacy targeted at educating broad populations of people, including African-Americans, Hispanics and other minority groups, women, blue-collar workers, rural communities and others.

If new initiatives are to reinforce cessation efforts, it will be important to understand the minimal work done in developing tobacco use cessation programs and materials directed toward African-Americans. Unfortunately, organized professional programs are virtually unavailable to segments of the African-American population, a problem which is exacerbated by the paucity of materials and programs developed for persons at a low socioeconomic level or with minimal literacy. Development of new programs and materials for minority population groups would be beneficial if these programs and materials:

- Are tailored to minority groups' tobacco use patterns;
- Are sensitive to the special obstacles encountered in the minority communities;
- Raise awareness of tobacco's health risks and quitting benefits and bolster primary group norms for cessation; and
- Integrate problem definitions that reflect on the role of the tobacco industry in the community.

New minority-targeted initiatives to reinforce anti-tobacco policy and community-based efforts will need to consider numerous impediments. First, the issue which motivates many urban communities concerns drugs and violence, unemployment, housing,

poverty and under-funded educational and health delivery systems. Drugs are a major concern because of the visible relationship to violence, often random and causing the deaths of innocent children, and the high priority given it by the federal government. Thus, the no more than 10,000 annual deaths attributed to illicit drugs, while not comparable to the 434,000 annual tobacco related deaths, constitute the most immediate and visceral experience felt by the average community resident.

Second, prevention and health promotion receive little support and are not given priority in a health care delivery system oriented to the medical model. Third, the penetration of minority communities by the tobacco industry is pervasive through marketing efforts and financial support of minority organizations and institutions. Fourth, there has been an absence, until recently (viz. the successful coming together and advocacy effort of the Uptown Coalition for Tobacco Control in Philadelphia), of significant African-American, Hispanic and other minority anti-tobacco advocates and community organization support for policy and advocacy initiatives. Fifth, there is no viable infrastructure to enable minority anti-tobacco advocates to communicate, network, plan and establish an agenda based on principles of empowerment and self-determination. Sixth, there has been an absence of culturally sensitive and racially relevant anti-tobacco advocacy and community organizing materials for use in local communities. Finally, viable interactions between minority anti-tobacco advocates and mainstream advocates and organizations have been lacking.

Recommendations

Black, Hispanic, Asian and Native-American communities are under attack by the tobacco companies; they are the targeted communities. As a result, these communities may be designated as a "chronic disaster area" for the purpose of focusing tobacco control activities. Given limited funding, we must also better target resources to communities which suffer excess mortality and morbidity due to tobacco.

To mount effective strategies, this committee decided to focus on children as the front line of tobacco use prevention efforts. Cessation efforts were considered as critical for adults. The committee encourages the other committees to ensure that their recommendations include targeted communities. The committee makes the following recommendations:

I. Data

• *There needs to be improved data on all aspects of tobacco control in African-American, Hispanic, Asian and Native-American communities.* The federal government must take the lead by encouraging the states to collect data uniformly and include race and ethnic data in their data collection activities. The committee welcomes efforts by states to include information regarding tobacco-related deaths on death certificates.

II. Education

• *Counter-advertising is a critical component to education.* Messages must be developed which are culturally competent; this means that the targeted community should be involved in the development of counter-advertisements. Additionally, it is essential to implement both offensive and defensive strategies. For example, the Department of Health and Human Services should be allowed to purchase air time for the ads it develops, materials on counter-heroes within targeted communities should be disseminated, tobacco companies should be made more responsible for their actions, etc.

• *Comprehensive school education is critical for K-12, as well as programs targeted to out-of-school youth.*

III. Leadership and employment

• *We need more leaders.* We need to develop a cadre of leaders of targeted communities to be active at all levels of tobacco control. We need to establish and reinforce communication channels among members of targeted communities. There exists an opportunity to create new political leadership, with children being the driving force and tobacco being the motivator.

• *We need to work with community-based organizations, especially credible ones which have not taken tobacco money.* Long-term funding for programs must be identified from the inception, and included as part of the program strategy.

• *The goals in "Healthy People 2000" should be made more challenging, and the goals for the overall population should be applied equally to all targeted communities.*

IV. Excise tax

• *The committee recommends enactment of a significant and substantial federal excise tax ($2), which is not earmarked.* It is important to note that the primary purpose of this tax is to decrease consumption and not necessarily to raise funds for health-related activities.

• State and local taxes should be increased substantially, and can be earmarked for health.

V. Worksite

• *Given the additional support provided by the recent findings of the Environmental Protection Agency related to the harm caused to nonsmokers by environmental tobacco smoke, all efforts should be made to make worksites smokefree.*

• All federally-funded facilities should be required to be smokefree.

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Environmental Tobacco Smoke

Julia Carol
David Burns, MD

Introduction

The support for public policy changes on issues related to environmental tobacco smoke (ETS) has changed dramatically during the last decade. By 1986, the scientific and public health communities had reached a consensus that exposure to ETS was a significant cause of lung cancer in nonsmokers. This scientific consensus rapidly expanded to include the regulatory agencies, local governmental jurisdictions, the business community and the general public. With the release of the EPA risk assessment classifying ETS as a Group A Carcinogen early this year, it is only the representatives of the tobacco industry who question the validity of the data linking ETS exposure to disease. Currently, even those groups opposing changes in local ordinances generally accept the health evidence. There is no longer significant disagreement that ETS exposure causes disease at the levels of exposure that occur in everyday life in US society; and that separation of smokers and nonsmokers in the same air space, or filtration of the air with commercially applicable technology, does not reduce exposure sufficiently to lower the risk below the regulatory threshold for other occupational or environmental carcinogens. The evidence indicating that ETS is responsible for the deaths of 53,000 American nonsmokers each year from cancer, heart disease, and other illnesses, a number of deaths substantially larger than that caused by automobile accidents, has fueled efforts to restrict smoking in workplaces and public places to protect nonsmokers.

The consequences of ETS exposure for children are particularly severe. In children, ETS exposure causes an increased risk of bronchitis and pneumonia, reduced lung function growth, increased prevalence of middle ear disease and asthmatic excerbations, and is a risk factor for the development of new cases of asthma. This increased vulnerability of children to injury from ETS exposure makes them a high priority for efforts to protect nonsmokers.

The widespread acceptance of the health evidence allows a fundamental shift in the strategy used to protect individuals from ETS exposure. Instead of focusing energy on convincing public policy makers that the data establish a health risk, efforts can now shift to persuading them that they need to respond to the risks generated by ETS exposure using the same logic and standards that apply to other occupational and environmental toxins and carcinogens. A substantial body of experience and legal precedent already exists to protect individuals from toxic and carcinogenic exposures in the general environment and especially in worksites, and this experience and precedent can now be applied to ETS exposure.

The norms that establish roles and responsibilities of employers, levels of acceptable risk, justification for governmental intervention, compensation for worker's injury and legal liability used for other occupational and environmental agents can now be brought to bear to reduce exposure to ETS. Once the risks are acknowledged and other mitigation strategies are examined, it becomes clear that a smokefree environment is the only option that does not require a special exemption for ETS from the existing standards for acceptable risks due to environmental exposures.

The pressures for change generated by the existing framework for environmental and occupational protection can be linked with the community based grassroots movement currently driving efforts to protect the nonsmoker, and the result would be a more comprehensive and effective approach to protection of nonsmokers. By combining incentives from a variety of directions, including economic benefits and risks, social pressure and the appropriate combination of ordinances and regulation, it is possible to both promote the cutting edge of change in nonsmoker protection and motivate those lagging behind to catch up.

It is far cheaper and easier for employers to prohibit smoking in the workplace than it is to install several complicated, expensive ventilation systems to segregate the smokers. The implementation of smokefree policies is easier when employers can tell their customers and employees that the law requires them to be smokefree, and worksite policies are more effective in actually protecting nonsmokers from exposure when there is also a strong local ordinance. Employees are winning workers' compensation cases based upon being forced to work in a smoky environment. For example, in Sausalito, California a nonsmoking, vegetarian waiter with no family history of heart disease was awarded an $85,000 settlement after suffering a heart attack caused by working for five years in a restaurant that permitted smoking. This case represents only the tip of a very large iceberg of potential workers' liability in this area. The current state of scientific data on ETS exposure is adequate to define ETS exposure as a contributing factor or exacerbating factor (the operational language for compensable injury in the workers' compensation system) in cardiovascular disease, lung disease and respiratory cancers in smokers as well as nonsmokers. This creates a potential workers'

compensation claim for approximately two-thirds of the disease that occurs in the US.

As this body of legal precedent develops it will create a powerful economic incentive to become smokefree in all areas of employment. In addition, as employers acknowledge the risks or can be shown to have been informed of the risks and do not take action to eliminate ETS exposure, they may also incur liability based on claims of negligence.

Public places such as restaurants are also workplaces for many people. In fact, according to Smoking and Restaurants: A Guide for Policy-Makers, published by the University of California, restaurant workers are exposed to three to five times more ETS than other workers, and consequently have about four times the expected lung cancer mortality and two-and-a-half times the expected heart disease mortality rate. The perception of what is acceptable protection for nonsmokers in a restaurant changes dramatically when the restaurant is considered as a worksite exposing employees as opposed to a public place exposing only the patrons.

Actions Taken to Protect Nonsmokers—State and Local

Although some states restrict smoking in public places, the vast majority of this protection occurs at the local level. To date, over 540 cities and counties throughout the country have enacted ordinances to protect nonsmokers.

In the 1980's, these ordinances provided for smoking and nonsmoking areas in workplaces and restaurants, while eliminating smoking in most other public places. It is interesting to note that the tobacco industry opposed the creation of separate sections and warned businesses of economic disaster if these sections were put in to effect. In 1986, then-Surgeon General C. Everett Koop acknowledged that these ordinances provided only partial protection when he declared that "the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to environmental tobacco smoke." This declaration led to a shift in the proposed protection of nonsmokers toward a smoke free work environment instead of separate sections.

After the EPA's draft risk assessment was released in 1990, a number of cities and counties began to adopt complete elimination of smoking in workplaces and restaurants. Four cities eliminated smoking in restaurants in late 1990; another seventeen did so in 1991, with most of the new ones also eliminating smoking in all workplaces. To date, 13 cities eliminate smoking in restaurants, 11 eliminate smoking in workplaces, and 24 cities or counties eliminate smoking in both—a total of 48 smokefree ordinances. The tobacco industry is now supporting separate sections, and maintaining that instituting a smoke free environment will lead to economic disaster.

The shift from ordinances restricting smoking to ordinances completely eliminating smoking represents the most dramatic and significant change over the last few years. This shift is possible because of the strong support from nonsmokers and smokers alike for these ordinances. Smokefree ordinances have been upheld by voters in communities throughout the country despite attempts by the tobacco industry to repeal them. In November of 1992, voters upheld five different local smokefree restaurant ordinances by an average margin of victory of 21 percent.

The heated, public campaigns to enact these ordinances are important to their effectiveness because they raise the entire community's awareness of the dangers of secondhand smoke and of the changes being mandated by the ordinance. As a result, these communities know about the existence and importance of these ordinances, and by forging a consensus become invested in their success. This process helps ensure compliance with the new law in a manner that state and federal regulations often cannot accomplish. In addition, it is easier to develop a consensus within local communities on the appropriate extent of restrictions on smoking to be applied, and this consensus is critical to sustaining the ordinance and promoting effective peer enforcement. The extent of restriction that can be sustained on a local level in individual communities is generally greater than that sustainable by a statewide consensus which must include both those communities who are supportive of restrictions and those which have not yet reached that level of consensus. The result is that statewide laws are likely to be less comprehensive in their protection of nonsmokers and less effective in their implementation. The development of a national consensus to support legislation protecting nonsmokers on the federal level would be even more difficult and would be likely to lead to even less comprehensive and effective policy change.

Although local laws have become stronger and more numerous at the local level, the tobacco industry has been able to prevent strong, effective laws from passing at the state level; and the general population is often isolated from the debate surrounding passage of state laws. These laws often go into effect without the community's awareness of the need for the law, the details of its provisions, or the process for its enforcement.

The tobacco industry knows that local laws tend to be stronger and more effective than state laws, and their primary strategy is to strip cities and counties of their power to restrict smoking by passing weak, ineffective state laws that preempt local control. Eight states partially or completely preempt local smoking restrictions. Even when state laws do not include preemption, they can have a chilling effect on local action.

Experience in the U.S. has shown that the recipe for success is a combination of education and legislation; both are needed to ensure support for and compliance with strong, comprehensive smoking control legislation. The public debate over the enactment of local tobacco control ordinances is one of the best public education campaigns available.

Federal Legislative and Regulatory Actions

In 1989, Congress enacted an amendment offered by Representative Dick Durbin (D-IL) and Senator Frank Lautenberg (D-NJ) eliminating smoking on virtually all domestic airline flights. The

law strengthened and made permanent a 1987 amendment that eliminated smoking on domestic flights of two hours or less. The airline smoking ban remains the most significant federal action protecting nonsmokers.

Although the airline smoking ban does not extend to international flights, the United States representative to the International Civil Aviation Organization supported a resolution encouraging membership nations to prohibit smoking on their international flights.

Other federal measures to protect nonsmokers were defeated, however, and President Bush failed to respond to a proposal from Louis Sullivan, Secretary of Health & Human Services, for an executive order requiring federal agencies to be smokefree.

In late 1992, Senator Lautenberg successfully amended an appropriations bill to require programs receiving federal funds that serve children under the age of five to be smokefree. A similar proposal introduced by Representative Durbin was not considered in the House, and the Lautenberg amendment died in conference committee.

Over the objections of the Secretary of Veterans Affairs, Edward Derwinski, the House voted to overturn the veterans' hospitals smokefree policy, which had been established to comply with new standards established by the Joint Commission on Accreditation of Healthcare Organizations. Congress subsequently approved legislation that may jeopardize the VA policy.

To date, the only significant federal law protecting nonsmokers remains the airline smoking ban.

Policy Questions

Federal, state, and local governments have all provided important protection for nonsmokers, and each level of government can make unique contributions to this protection. For example, smoking restrictions on aircraft could not be enacted on a state-by-state basis. Airlines needed to be covered by a federal law. Similarly, federal agencies are exempt from state and local laws, and federal action is needed to protect employees and the public in these facilities.

The goal of regulation at any level is to change the behavior of smokers in order to reduce or eliminate the exposure of nonsmokers to ETS, and it is the effectiveness of a given regulatory approach in actually changing smokers' behavior, rather than simply the comprehensiveness of the regulations enacted, that determines the extent of protection provided to nonsmokers. The effectiveness of an ordinance in changing the behavior of smokers is heavily influenced by the norms for expected behavior among smokers and nonsmokers, by the support and peer enforcement within the community, and by the awareness of smokers and nonsmokers that the rules have changed. For these reasons, the federal government may not always be the most appropriate jurisdiction for regulating smoking. The federal government may have the authority and responsibility to regulate worksites and other environments uniformly across the nation, but that authority does not automatically translate into a protection of nonsmokers unless there is compliance with the regulations by individual smokers and enforcement of the regulation by individual nonsmokers and individual employers.

Local jurisdictions have been able to respond more rapidly to the changing understanding of the risks of ETS exposure because it is easier to develop a consensus to support these changes in a single locality as compared to nationally. Similarly, local workplace and public places laws are often stronger and more effective than federal laws because they can be developed and enforced based on the locally derived consensus. The federal regulatory structure must recognize the limitations of developing and implementing regulations protecting nonsmokers; and, in the process of fulfilling its mandate to provide a safe environment, it should not restrict the freedom of the states and cities to enact strong, effective measures tailored to the needs of their own communities.

Regulatory agencies like the Occupational Safety & Health Administration (OSHA) must recognize the critical role played by local ordinances in ensuring the control and enforcement that provide effective protection for nonsmokers.

In determining where to direct efforts to regulate smoking, the following issues must be considered:

1. Each jurisdiction should take action to eliminate exposure to environmental tobacco smoke.
2. Each jurisdiction should take care to provide the most effective enforcement of the elimination of exposure to environmental tobacco smoke.

Recommendations

The following list of recommendations is in order of priority.

1. All jurisdictions should take action to protect children from exposure to environmental tobacco smoke. For example, we endorse the legislation proposed by Congressman Dick Durbin and Senator Frank Lautenberg which would require all federally-funded children's programs to establish and make a good faith effort to enforce a nonsmoking policy that protects children from exposure to environmental tobacco smoke. In addition:

   A. Local and State governments should enact legislation requiring that agencies receiving government funds for providing services to children be 100 percent smokefree.

   B. State legislatures and local school boards should enact regulations requiring all public elementary and secondary schools to be 100 percent smokefree in all areas of the campus.

   C. The Congress should enact legislation requiring all colleges and universities that receive federal funds to be 100 percent smokefree in all enclosed areas.

2. All jurisdictions should take action to protect workers and other people from exposure to environmental tobacco smoke.

   A. The local governments should establish ordinances requiring the elimination of environmental tobacco smoke in all restaurants and other worksites.

B. The State governments should establish a Clean Indoor Air Law without preemption of local mandates.

C. The President should sign an executive order making enclosed federal workplaces, including all branches of the military and the Veterans Administration hospitals, 100 percent smokefree to ensure that all employees are protected from exposure to environmental tobacco smoke. The Congress should institutionalize this policy by enacting legislation to protect employees from the hazards of environmental tobacco smoke and should extend this policy to cover all buildings in the Legislative and Judicial Branches.

D. The Congress should enact legislation requiring all international airline flights by American carriers originating from or landing in the United States or its territories to be 100 percent smokefree, and the Department of Transportation should support and aggressively pursue international standards to make all international airlines 100 percent smokefree.

E. OSHA should develop regulations covering smoking in the workplace, and should consider the importance of local norms in the effective enforcement of policies to protect nonsmokers.

3. Economic incentives for businesses to go smoke free should be developed.

A. Tobacco control committees should work with insurers to acquaint them with the liability implications of environmental tobacco smoke exposure and encourage them to differentially rate worksites by their smoking policies for purposes of workers' compensation insurance.

B. Members of the scientific and legal communities should support the development of legal precedent that includes diseases secondary to ETS exposure under those conditions covered by the workers' compensation system for both smokers and nonsmokers.

Who's Minding the Tobacco Store?

It's Time to Level the Regulatory Playing Field

John Slade, MD
Scott Ballin, JD

"We accept an interest in people's health as a basic responsibility, paramount to every other consideration in our business."

Tobacco Industry Advertisement to the American Public
The New York Times, January, 1954

I. Introduction

As the Food and Drug Administration continues to use its authorities to protect the health and welfare of the American public from misbranded, adulterated, dangerous products, there still remains one product that in spite of the fact that it kills over 430,000 Americans each year remains, as columnist Ellen Goodman noted, the "Missing Entree in the Regulatory Menu." That product is tobacco. Its absence from specific regulatory controls is not an accident but rather a tribute to the tobacco industry's long time strangle hold over the Congress and the Executive branch. What other product can boast that it is a major cause of cancer, heart disease, emphysema, stroke, premature births and other ailments and still be allowed on the market? What other addictive drug (nicotine) can be sold on the market with virtually no federal advertising, promotion and distribution constraints except for so-called industry "voluntary efforts," which have not protected the public, for nearly 30 years. And what other product can make unsubstantiated implied health claims about itself (i.e. low tar, low nicotine and weight control), contain dozens of untested and undisclosed chemical additives, as well as undisclosed harmful constituents, and still remain on the market?

It is now almost thirty years since the first Surgeon General's Report was released implicating cigarettes as a cause of cancer—almost thirty years since Surgeon General Luther Terry, MD first indicated that any voluntary efforts by the tobacco industry did not "obviate the desirability of enacting specific regulatory authority to express those minimum standards that protection of the public interest requires."

In 1964, when the first Surgeon General's Report on cigarette smoking and cancer was first released, numerous bills were introduced in Congress that would have resulted in specific authorities being vested in the Federal Trade Commissioner and the Food and Drug Administration designed to ensure the proper regulation of this dangerous consumer product. Unfortunately the tobacco industry was quick to develop legislative and public relations strategies that were designed to ensure that no such laws were enacted. As a former Vice President of the Tobacco Institute, Frederick R. Panzer, was to later acknowledge in a 1972 confidential memorandum to then Tobacco Institute president, Horace Kornegay, the holding strategy was "brilliantly conceived and executed," and involved:

- "creating doubt about the health charge without actually denying it."
- "advocating the public's right to smoke without actually urging them to take up the practice."
- "encouraging objective scientific research as the only way to resolve the question of health hazard."

The strategy according to Panzer involved particular attention to issues in the areas of litigation, legislation, and public relations.

In July 1992, a Coalition of national health organizations (including the American Cancer Society, the American Heart Association, the American Lung Association, the American Public Health Association, the American Academy of Pediatrics, the American College of Cardiology, the American Association for Respiratory Care, the Association of State and Territorial Health Officials, and the American Society of Internal Medicine) sent a letter to Congressman John Dingell, Chairman of the House Energy and Commerce Committee, asking that he open a thorough investigation into whether representatives of the tobacco industry and the Tobacco Institute sought on numerous occasions to defraud the House Energy and Commerce Committee and its subcommittees as well as the public by repeatedly stating that the tobacco industry was engaged in an objective, independent scientific inquiry as to the link between tobacco and disease. In its closing paragraphs the Coalition asked that Chairman Dingell "explore the need to once and for all bring this addictive drug in line with the way other legal, dangerous products are regulated. It is time, after 25 years of patience, to do what Surgeon General Luther Terry, MD and FTC Chairman Paul Rand Dixon and a number of other Congressional members believed crucial to the protection of the public health —thatis to regulate the manufacture, distribution, sale, labeling, advertising and promotion of this nation's leading cause of death."

It is a national health travesty that an inherently dangerous product, that is by far the number one cause of preventable death in the nation, should go virtually unregulated. The few federal and

state laws and regulations that do exist are a patchwork of incomplete and ineffective controls. To date only the Congress has had any specific authority to regulate these products for health and safety purposes. Unfortunately for the health of the American public, tobacco has been exempted from every major federal health and safety law enacted by Congress including the Consumer Product Safety Act, the Fair Labeling and Packaging Act, the Toxic Substances Act and the Federal Hazardous Substances Act. Because the Congress has failed to deal with the tobacco issue, millions of people have needlessly died or been disabled from cardiovascular disease, cancer, emphysema, stroke and a host of other diseases. With health care costs continuing to skyrocket, with preventive health measures finally being viewed as critical to health care reform, many national health organizations as well as many members of Congress believe it is time for a change.

FDA Commissioner David Kessler has on many occasions expressed his strong belief about the role he sees for the FDA in carrying out its statutory responsibilities, especially for high risk products which have the greatest impact on health. As he said in a speech published in the November 1991 edition of the *Food Drug Cosmetic Law Journal*,

"I have set a range of goals to make the agency more credible, more efficient and better equipped to serve the country in the future. But if you ask what is the essence of my program I would answer quite simply that it is to enforce the law."

Setting aside the historical, political, or economic circumstances surrounding the tobacco issue, it is obvious that this product should have and would have been removed from the marketplace a long time ago. Instead, today we find ourselves at the other extreme—faced with the manufacturing, distribution, sale, labeling and advertising of a widely used, addictive product that is subject to minimal and ineffective regulation. What follows is a three pronged proposal to correct this national travesty.

- The Executive Branch at both federal and state levels should use every available means to make the regulation of tobacco products a central feature of health policy and practice.

- The FDA and the analogous existing authorities within states should regulate tobacco products which make health claims (implied or direct) or which seek to alter the structure or function of the body and therefore fall squarely under the definitional requirements for "drugs".

- The Food, Drug and Cosmetic Act (FDC Act) should be amended through legislation to specifically and unequivocally bring tobacco in line with the ways and means other products (particularly those presenting health risks to the public) are regulated.

II. What can the FDA and states do under existing authorities to regulate tobacco products

Legislative and Legal Actions Defining "Drugs"

In 1906, Congress enacted the first federal food and drug law. The primary purpose of the Act was to ensure safety of products sold as foods and drugs. The Act defined "drug" very narrowly to include only those articles which were listed in the US Pharmacopeia. Manufactured tobacco products, including cigarettes, were not listed at that time.

Since 1906 the authority of the FDA has been expanded to include cosmetics and medical devices as well as food and drugs. All of the products covered by the Act are products that are either ingested by man, are applied to the skin, or implanted into the body. FDA regulation of these products not only covers the composition of the products, but in most cases their ***labeling, sale, distribution, advertising and promotion.***

In the 1930s, Congress, concerned with an increasing number of ineffective, unsafe and dangerous products and devices appearing on the market, expanded the definition of "drug" under the Act. The Senate Committee Report accompanying the 1935 Act noted:

"The definition of 'drug' has been expanded to include, first, substances and preparations recognized in the Homeopathic Pharmacopeia of the United States; second, devices ***intended for use in the cure, mitigation, treatment or prevention of disease;*** third, substances, preparations and devices intended for diagnostic purposes; and fourth, such articles other than food and cosmetics ***intended to affect the structure or function of the body.*** Such expansion of the definition of the term 'drug' is essential if the consumer is to be protected against a multiplicity of devices and such preparations as 'slenderizers,' many of which are worthless at best and some of which are distinctly dangerous to health." (Emphasis added.)

Congress was also very clear that product definitions are not and should not be mutually exclusive. As the Senate Report further noted:

"The use to which the product is to be put will determine the category into which it will fall. If it is used only as a food it will come under the definition of food or none other. If it contains nutritive ingredients but is sold for drug use only, as shown by labeling and advertising, it will come under the definition of drug but not that of food. If it is sold to be used both as a food and for the prevention or treatment of disease it would satisfy both definitions and be subject to the substantive requirements of both. The manufacturer of the article, through his representations in connection with its sale can determine the use to which the article is to be put." (Senate Report 74-361, 74th Congress 1st Session, 1935p. 4. See also, *U.S. v. Article—Sudden Change*, 409 F.2d 734, 739., 1969).

It is, thus, legally arguable that low tar and low nicotine cigarettes clearly fit within the parameters of what both the Congress and the courts and state laws intended when they defined drugs. Tobacco companies manufacture, advertise, promote, and sell low tar and low nicotine with the obvious intention of playing on the public's perception that use of these products will mitigate and prevent the onset of disease associated with smoking.

Court Rulings Find Tobacco Products to be "Drugs" Under the FDC Act

The expanded definition of "drugs" was applied against cigarettes in two FDA related court cases in the 1950s. The courts found that conventional cigarettes could be "drugs" under certain circumstances. In the court's view, the question of whether or not the FDA could assert jurisdiction over tobacco hinged on whether or not the products were being sold as articles intended to either mitigate or prevent disease or intended to affect the function or structure of the body and thus were not sold just for "smoking pleasure only."

As the court noted in *U.S. v. 46 Cartons Fairfax Cigarettes:*

"If claimant's labeling was such that it created in the mind of the public the idea that these cigarettes could be used for the mitigation or prevention of the various named diseases, claimant cannot now be heard to say that it is selling only cigarettes and not drugs... The ultimate impression upon the mind of the reader arises from the sum total of not only what is said, but also all that is reasonably implied. *If claimant wishes to reap the reward of such claims let it bear the responsibility as Congress has seen fit to impose on it.*"

This was the first time that cigarettes were found to be subject to the FDA's jurisdiction because they were not sold "merely for smoking pleasure" but had other intended purposes. Because those cigarettes could not meet the statutory and regulatory requirements of the FDC Act, they were removed from the marketplace.

The idea of classifying cigarettes as drugs has been reaffirmed by the FDA in testimony before Congress on numerous occasions and again more recently by the courts. In 1977, for example, in attempting to further clarify FDA's jurisdiction, Action on Smoking and Health (ASH) and others filed a petition with FDA seeking to classify all cigarettes as drugs under Section 201 (g)(C) as articles "intended to affect the structure or any function of the body of man or other animals." The premise on which the petition was filed was that because all cigarettes contain nicotine "they fall easily and squarely within the broad language of the act." FDA denied the petition—a decision upheld in court in 1980. Then FDA Commissioner Donald Kennedy and the Court held that the petitioners had failed to establish an "*intent*" on the part of the manufacturer to sell a product which "affected the structure or function of the body." Specifically, the Commissioner wrote:

"Statements by the petitioners and citations in the petition that cigarettes are used by smokers to affect the structure or functions of their bodies are not evidence of such intent by the manufacturers or vendors as required under provisions of the FDC Act."

However, in denying the petition, the case gave further clarification as to the requirements needed to be satisfied before FDA would assert jurisdiction under Sec. 201. The FDA said that in the case of cigarettes *in general*, petitioners failed to provide sufficient evidence to establish that manufacturers sell cigarettes with an *intention* of affecting the structure or function of the body.

The issue of whether tobacco was contained in the products was and is not pertinent to a determination as to whether or not a tobacco product is a "drug" if it meets the statutory and court requirements. Consumer intent alone (absent a showing of vendor interest), said the Court, was evidence, but was not sufficient by itself to bring the cigarettes under the definition of "drug" under the Act.

In 1988, with this decision clearly in mind, the Coalition on Smoking OR Health (American Cancer Society, American Lung Association, and the American Heart Association) filed a petition with FDA seeking to classify all so-called "low-tar" and "low-nicotine" cigarettes as "drugs" under the FDC Act. The Coalition's petition is based on a thorough review of the advertising and marketing strategies of these products by the industry as well as evidence released as a result of the 1988 *Cipollone v. Liggett Group Inc.* liability case. In that case, for example, US District Court Judge Sarokin noted that the tobacco companies:

"were well aware of the extreme difficulty smokers had and have in quitting smoking. They knew based upon sophisticated research that a smoker who found it difficult to quit, particularly faced with claims of hazards of risks, would focus on any rationalization to justify his or her continued smoking," and "plaintiff offered expert testimony which demonstrated that even after the companies ceased making specific health claims, the vast advertising of the industry created a consistent message of purity, health, safety, reduced tars and nicotine, etc. This campaign served to create doubt in the minds of the consumer as to smoking dangers, and played on the weakness of those who were either addicted and/or dependent."

The Coalition's petition concludes that there is a clear indication that the tobacco industry has marketed these products with the clear *intention* that by using low-tar and low-nicotine products a smoker can "mitigate" or "prevent" diseases associated with the smoking habit. A series of advertisements run by Vantage brand cigarettes such as the one below in *Time* on January 8, 1973, blatantly indicated this intended purpose:

"For years, a lot of people have been telling the smoking public not to smoke cigarettes, especially cigarettes with high 'tar' and nicotine....Since the cigarette critics are concerned about high 'tar' and nicotine, we would like to offer a constructive proposal. Perhaps, instead of telling us not to smoke cigarettes, they can tell us what to smoke. For instance, perhaps they ought to recommend that the American public smoke Vantage cigarettes...Vantage gives the smoker flavor like a full-flavor cigarette. But it's the only cigarette that gives him so much flavor with so little 'tar' and nicotine...".

The message contained in that Vantage advertisement is one that is repeated over and over again in today's marketing of low yield cigarettes. In one recent edition of *Life* magazine, three (3) such advertisements appeared.

The Coalition's petition has remained pending at the FDA since 1988. Since that petition was filed, over one and a half million Americans have died from cigarette smoking.

Also in 1988, the Coalition on Smoking OR Health and the American Medical Association filed separate petitions seeking to classify a newly developed R. J. Reynolds' cigarette-like device named Premier as a drug under the FDC Act. The arguments asking FDA to assert jurisdiction were based on a premise similar to the low-tar and low-nicotine petition: that R. J. Reynolds called its new product "cleaner," one which "reduces the controversial compounds" and sold it as "safer," that is, designed to mitigate and prevent disease and to affect functions or structures of the body. Because R. J. Reynolds withdrew the product from the marketplace, no action from the FDA was forthcoming. Petitions on other similar products were filed in 1991 and 1992.

Defining when FDA can—or cannot—assert jurisdiction over cigarette or cigarette-like products was further clarified in February 1987. A manufacturer wanted to market a non-tobacco "cigarette-like device consisting of a plug impregnated with nicotine solution inserted with a small tube—corresponding in appearance to a conventional cigarette." FDA had no difficulty in classifying the product as a "drug." After reviewing promotional material as well as registration material filed with the Securities and Exchange Commission (SEC), the FDA reached the following conclusion:

"It is our position that Favor is a nicotine delivery system intended to satisfy a nicotine dependence and to affect the structure or one or more functions of the body."

Masterpiece Tobacs is another case of FDA asserting jurisdiction over a nicotine delivery system, in this instance one which contained tobacco. The product was being sold in the form of a chewing gum. The manufacturer argued that because the product contained shreds of tobacco, it was outside the FDA's jurisdiction. The FDA disagreed and ruled that the product was a "food" under the FDC Act because that definition included "chewing gum." Because tobacco is not an approved substance for use as an additive in foods, the FDA ruled that the product was adulterated and could not be marketed for health and safety reasons.

Finally, in 1989 the FDA issued a regulatory letter to C.A. Blockers, Inc. indicating that a cigarette additive, "N-Bloctin, "was a "drug" subject to regulation by the FDA. "N-Bloctin," according to the FDA regulatory letter "is an alcohol-containing cigarette additive, the intended uses of which include, through action at the tissue cells, to inhibit the accumulation in the lungs of nitrosamines present in conventional cigarette smoke and thereby to prevent lung cancer." The regulatory letter goes on to state that "[c]igarettes marketed as containing the 'N-Bloctin' additive such as the 'Optima' and 'Spectra' brands, are also 'drugs' under Section 201(g)(1)(B) and (C) of the Food, Drug and Cosmetic Act. When one or more of these uses for cigarettes containing 'N-Bloctin' is recommended or suggested in the labeling they would be 'new drugs' as defined in Section 201(p) of the FDC Act and subject to Section 505(a) and 802 of the FDC Act."

At the state level, efforts are already underway to seek classification of low tar and low nicotine products as drugs under state laws. Petitions have been filed in a number of states citing state drug laws which mirror almost word for word the federal drug statutes. State attorney's general have also been asked to use their authorities to crack down on the advertising, promotion, and sale of these products as 'drugs' thereby avoiding the issue of federal preemption. While the federal Cigarette Labeling and Advertising Act preempts states from regulating the advertising and labeling of cigarettes, states retain their full authority to regulate any and all products which are deemed to be drugs. If Congress had intended to limit their authorities in this area they would have done so.

The need for FDA to use existing authorities is urgent. While the 1990 Surgeon General's report, *The Health Benefits of Smoking Cessation*, touts the health benefits of quitting, the tobacco industry continues to promote low-tar and low-nicotine brands of cigarettes at an ever increasing rate. The clear implications of this calculated strategy is that, instead of quitting, smokers will continue to smoke, believing that the products they switch toare somehow safer and will mitigate their risks of disease. More and more so-called "safer" products are appearing on the market. A consortium of over 60 national health organizations believes the FDA has the authority to put a stop to this deception, and to prohibit unsubstantiated health claims.

III. The need to amend the Food, Drug and Cosmetic Act to regulate the manufacture, distribution, sale, advertising, and promotion of tobacco products

Because tobacco products are dangerous and addictive, it is only rational that, at a minimum, tobacco products be regulated in a manner similar to how other dangerous but legal consumer products are regulated. Past attempts to bring tobacco under the jurisdiction of one or more of the federal health and safety agencies have failed. In recent years, however, new efforts to regulate tobacco have enjoyed increasing support inside and outside of Congress.

The Congress and the public are becoming increasingly aware that, unlike other consumer products, and because of the clout of the tobacco industry, no federal regulatory agency has exerted or been able to exert any health or safety jurisdiction over tobacco products except in the narrow exceptions outlined above.

The tobacco industry would rather this fact be ignored. One of the tobacco industry's public relations ploys has been to try to convince legislators and the public that they are already burdensomely over-regulated and that there is no need to apply standards similar to those that are applied to foods, drugs and cosmetics to tobacco. The reality of the matter is that tobacco products are so dangerous that subjecting them to present FDA lawsgoverning other products would likely result in their total ban. Thus the industry has had to ensure that no health and safety regulations are applied to their products. The discovery documents released in the Cipollone case indicate that they have done this with exceptional skill.

Somewhere between the extremes of the present absence of significant health and safety regulation and a complete ban of the product is a middle ground that will both allow the product to remain on the market and at the same time subject it to necessary

regulations governing its manufacture, distribution, sale, labeling, advertising and promotion. Achieving this will require amending the Federal Food, Drug and Cosmetic Act to specifically and unequivocally give the FDA authority over tobacco products. Under such an approach, the tobacco industry would be required to adhere to requirements with which manufacturers of other products have had to comply. For example, does it make sense for the FDA to have full regulatory control over nicotine patches and gum which are designed to help people quit their addictive smoking habits and not be able to have comparable regulatory control over the products causing addiction and death? Clearly, the double standard must end. The health of the public should be put above the political clout of the tobacco industry. Tobacco products should thus be subjected to regulation governing:

- toxicologic testing and disclosure of chemical additives in tobacco products,
- disclosure and warnings related to constituents in both mainstream and sidestream smoke (there are some 4,000 distinct chemicals in tobacco smoke),
- requirements for additional labeling such as warning of addiction, stroke, use of tobacco products with birth control pills, and other contraindications (including information about the health effects of environmental tobacco smoke), and practical advice and assistance to consumers on stopping tobacco product use,
- distribution and sale of tobacco products (for example, prohibiting free sampling, prohibiting sales through vending machines and enforcing restrictions on sales to minors),
- prohibiting advertising and promotional practices commensurate with the risks involved from use of the product (comparable with other legal drug products, i.e. prescription drugs). For tobacco products this might mean a complete elimination of positive tobacco advertising and promotional practices,
- prohibiting the use of unsubstantiated health or other claims (i.e. low tar, low nicotine, etc.),
- right of inspection of manufacturing plants, subpoena power, seizure of adulterated and misbranded products by the FDA.

Legislative recommendations were seriously proposed in 1964 which would have accomplished many of the above objectives either by putting tobacco directly under the FDA's jurisdiction or by strengthening the authorities of the Federal Trade Commission. In what is now regarded as standard heavy-handed tactics by the tobacco industry, these legislative proposals were significantly watered down to require only a weak, inconspicuous, Congressionally-written health warning on cigarette packages. While that label has been updated since 1964, nothing has been accomplished that would subject the tobacco industry to federal standards that are applied to every other legal product in our society. In 1988, and again in 1991, legislation was introduced for the first time since 1964, that would attempt to correct the gaping regulatory loophole. The legislation introduced originally by former Congressman Bob Whittaker and Senator Jeff Bingaman and later in the 102nd Congress by Congressman Mike Synar would establish a new chapter under the Food, Drug and Cosmetic Act.

For the last thirty years, the tobacco industry has assured the U.S. Congress that, as a responsible industry, it would do everything it could to find the answers as to whether cigarette smoking causes disease. In 1954 the Tobacco Industry ran an advertisement in *The New York Times* that stated:

"We accept an *interest in people's health as a basic responsibility, paramount to every other consideration in our business.*" (Emphasis added)

"We believe the products we make are not injurious to health."

"We always have and always will cooperate closely with those whose task it is to safeguard the public health." (Emphasis added)

In 1964 Bowman Gray, Chairman of the Board of R. J. Reynolds told a House Committee, "If it is proven that cigarettes are harmful we want to do something regardless of what somebody else tells us to do. And we would do our level best. This is just being human." Thirty years later, after 50,000 studies have proven that cigarette smoking is a major cause of cancer, cardiovascular disease, emphysema and stroke, the tobacco industry still denies that any relationship between use of their products and disease has been proven and is still engaged in a "holding strategy" designed to head off any serious or significant attempts at having its products properly regulated.

Congress was presented with the opportunity in 1964 to pass significant legislation that could have resulted in the saving of millions of American lives, but failed. The recent decision by the US Supreme Court in *Cipollone*, while reaffirming the right of individuals to sue tobacco companies under many causes of action, also reminded us of the glaring loophole that exists in our federal health and safety laws when it comes to tobacco. By attempting to reserve for itself the role of solo regulator of tobacco products and then failing to carry out its responsibilities, Congress has done a tremendous disservice to the health of all Americans. Unless Congress (as well as the FDA) has the courage to undo what it did in 1964 under pressures from the industry, tobacco products will, tragically, remain the leading cause of preventable death and disability in the U.S.

IV. Opportunities for state regulation of tobacco products

Under our federal system of government, the protection of the public health is largely a responsibility of state and, by extension, local government. Although there has been little regulation of tobacco products at the state level, states have a variety of powers to protect their citizens. Existing consumer protection laws can be used for this purpose, and the Supreme Court's decision in *Cipollone* (June 1992) opens up additional opportunities for protecting the public at the state and local levels.

In the first part of this century, 24 states severely restricted or banned the sale of cigarettes. These laws came about as part of

the prohibitionist movement. In the wake of the commercial success of the American blend cigarette following the 1913 introduction of Camel, these laws were either repealed or amended to only limit sales to minors by the 1930s. More recently, two states banned the sale of clove cigarettes in the 1980s following reports of serious acute toxicity from these products. (Clove cigarettes, or kretek, are a product of Indonesia which contain a mixture of tobacco and clove.)

In the early 1980s, the marketing of moist snuff products by US Tobacco resulted in a epidemic of oral tobacco use among adolescent and pre-adolescent boys, an epidemic which continues to this day. Within a few years, several states either passed or considered legislation to regulate the advertising and labeling of chewing tobacco and moist snuff. Faced with the possibility of diverse regulation at the state level, this segment of the tobacco industry began serious negotiations in Washington for a federal law. This was passed in 1986 and resulted in warning labels on chewing tobacco and moist snuff products and advertising and a ban on broadcast advertising for these products.

Consumer Protection Laws. Existing consumer protection laws are amajor potential tool for tobacco product regulation at the state level. Don Garner, a law professor at the University of Illinois School of Law in Carbondale has outlined this approach most clearly. State consumer protection laws generally describe the following as being in violation:

- Unfair or deceptive trade practice,
- Omission of material fact, and
- Creating confusion in the marketplace.

The state does not need to prove that consumers relied on unfair, deceptive, incomplete or confusing information, only that such practices occurred. Fraud, since it leads to many if not all of these practices, is, itself, actionable as well. There are many potential bases for cases, including the systematic way the industry has misled the public about hazards caused by its products, the health claims inherent in so-called low "tar" products, and the bait and switch tactics involved in much of low tar cigarette advertising.

These laws permit several remedies, including restitution (disgorging the ill-gotten gains) and penalties.

States pursuing actions under these laws might seek remedies which have symmetry with the losses suffered because of tobacco products. These might include:

- Funding a public information campaign,'
- Payments to Medicaid for the costs of care for tobacco-caused illness, and
- Undoing the fraud by paying for quit-smoking treatment.

Under many laws, individuals can pursue private actions as well. In such actions, the person(s) bringing the complaint must make a showing of injury or damage. As with state action, though, the private party need not show reliance on the deceptive practice. Penalties are only available for injury or damage caused by deceptive practices.

New Opportunities to Regulate Tobacco Products. The Supreme Court's decision in *Cipollone* severely limits the degree to which federal law preempts state regulation of tobacco products. While the tobacco industry had claimed an expansive protection, immunizing itself from virtually all state action, the Court held that the only thing states could not do was regulate cigarette advertising in a couple of narrow, specific ways.

Section 5 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C.A. S 1334, as amended) includes the following preemption provision:

(a) No statement relating to smoking and health, other than the statement required by section 4 of this Act, shall be required on any cigarette package.

(b) No requirement or prohibition based on smoking and health shall be imposed under State law with respect to the advertising or promotion of any cigarettes the packages of which are labeled in conformity with the provisions of this Act.

Edward O. Correia, a professor of law at Northeastern University School of Law, has explored the opportunities available to states in the wake of the *Cipollone* decision in his paper "State Legislation After *Cipollone*." He outlined several areas in which states may now act to protect their citizens from tobacco products. These are:

- The regulation of express warranties under state contract law.
- Requiring tobacco companies to furnish information to the government (for instance, information about ingredients and information about the toxicity of the products), and
- The regulation of the flow of information about tobacco products and their use through channels of information other than advertising.

In addition, he points out that states may define the remedies available in each of these areas by statute.

V. Recommendations

Political maneuverings by the tobacco industry have closed off nearly all regulatory avenues for these most dangerous products. Cigarettes and other tobacco products are both the least regulated and the most dangerous consumer products in the country.

The only existing potential authority to regulate tobacco products is that of the Food and Drug Administration (FDA). Indeed, FDA has been willing to regulate specific products when the agency became convinced that the manufacturer had intended a drug effect.

The Coalition on Smoking OR Health has petitioned FDA to regulate so-called "low tar" cigarettes as drugs because of health claims in their advertising and has petitioned that certain brands targeted at women be regulated because of their promise of weight control.

Discussion in the workshop considered opportunities to regulate these products at both the Federal and State levels.

Federal

• The Executive Branch should make the regulation of tobacco products—regulation of their manufacture, distribution, sale, labeling, advertising, and promotion—a priority in federal health care reform and other health policy initiatives.

• FDA should use its existing authorities to regulate all "low yield" tobacco products as drugs under Sec. 201 of the Federal Food, Drug and Cosmetic Act.

• Congress should enact specific statutory authorities which without question give the Food and Drug Administration the authority *and the resources* to regulate the manufacture, distribution, sale, labeling, advertising, and promotion of tobacco products.

State

• The nation's govenors should make the regulation of tobacco products a priority in health policy initiatives.

• States should use their existing drug authorities to regulate "low yield" tobacco products as drugs.

• States should consider enacting specific statutory provisions which would regulate the manufacture, distribution, sale, labeling, advertising, and promotion of tobacco products as a class of drug. These new requirements should include full disclosures of ingredients and of information known to the manufacturers about the toxicity of the products as well as requirements that the manufacturers assist customers who want to quit.

• States should ban billboards which advertise tobacco products.

• States should use existing consumer protection authorities to regulate the manufacture, distribution, sale, labeling, advertising and promotion of tobacco products.

Public Health Community

• The public health community should develop, support, and maintain a resource library which would serve as a repository for information about the tobacco problem needed by policy makers and regulators.

'American Brands, the maker of MISTY cigarettes calls its direct mail operation a "Smokers Information Center." Since each tobacco company maintains extensive mailing lists of its customers and potential customers, information on harms from smoking and advice on how to quit could easily be sent to these individuals directly as part of public information campaigns.

Tobacco Use: An American Crisis

The Role of Federal and State Excise Taxes

David Sweanor, JD
Kenneth E. Warner, PhD

The Effect of Taxation

It is a basic rule of economics that, as the price of a commodity rises, demand for that commodity falls. There is a substantial body of evidence, from the United States and other countries, that demonstrates that a cigarette price increase leads to a fall—but a less than proportionate fall—in cigarette consumption. Much of the evidence was summarized in the 1992 report of the Surgeon General, *Smoking and Health in the Americas* (pages 127-136).

That evidence is based on econometric studies. Empirical experience in countries which have seen substantial price increases tells a similar tale. The relationship between the real (ie. inflation adjusted) price of tobacco and per capita consumption for Canada shows this clearly (figure 1).

The Canadian experience also suggests that price has been associated with a particularly rapid fall in consumption among teenagers (figure 2).

But Canada is not special. It is typical. Exactly the same phenomenon can be seen in the United States (figure 3). As shown in figure 4, taxes in the U.S. have fallen in real terms since the time of the landmark 1964 report of the United States Surgeon General. In nominal terms, total taxes rose from 14 cents per pack that year to 44.5 cents in 1991.

Adjusted for inflation, however, the tax would have needed to be 61.6 cents simply to maintain its real value. As such, real taxes are 28% lower in 1991 than they were in 1964. Both state and federal taxes fell during this time. Adjusted for inflation, federal taxes fell by more than 40%.

Taxes on a pack of cigarettes have fallen from 50% of the selling price to only 25%, as shown in figure 5. One result of this is that the United States now has the lowest taxes on tobacco of any major industrial country, and is much lower than Canada and northern European countries, as shown in appendix A.

Through most of the 1980's total taxes have remained rather constant in real terms. While many governments balked at the idea of raising taxes, the tobacco industry showed no such qualms: the industry raised wholesale prices frequently and substantially. The result: cigarette prices rose by 60% more than the general rate of inflation. As the economic analyses would predict, consumption fell (figure 3).

Figure 1

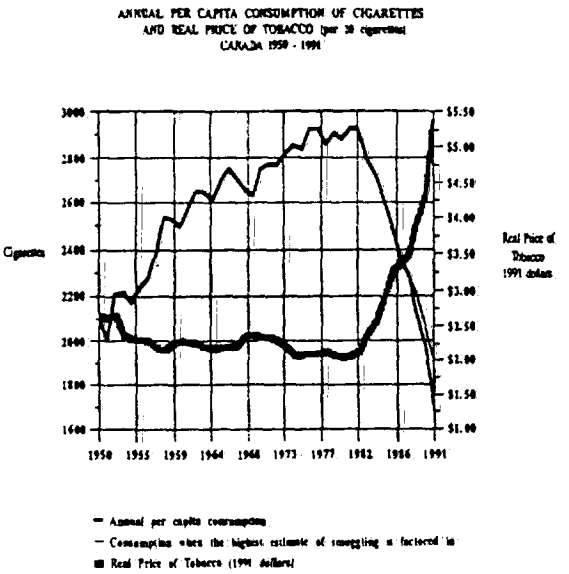
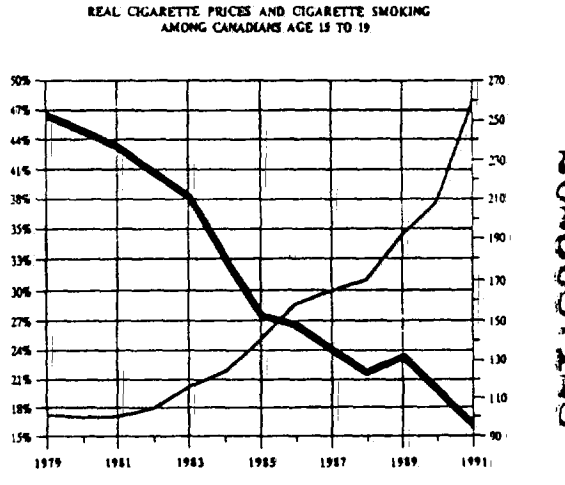


Figure 2



Precise estimates of the relationship between price and demand vary. A reasonable estimate is that a 10% increase in price leads to about a 4% fall in consumption. For children, the effect of price increases on smoking is believed to be at least as substantial.

In recent years, the tobacco industry has introduced discount brands of cigarettes and offered significant percentage discounts through in-store promotions and the use of coupons. This means that price-sensitive people have been able to move to less expensive cigarettes as an alternative to leaving the market altogether, or not entering it in the first place. Research on price-sensitivity does not address the implications of the fact that 'average' price is no longer indicative of what price-sensitive people are paying for their cigarettes.

Arguments for Increasing Tobacco Taxes

Raising tobacco taxes to the level currently existing in places such as Scandinavia, the British Isles, and Canada could result in millions fewer tobacco-caused deaths among Americans currently alive. In terms of health impact, there has probably never been a single intervention in American history that has accomplished what could be achieved through reform of federal and state tobacco tax laws. Indeed, Harris (1987) estimated that the 8-cent-per-pack federal tax increase in 1983 would mean that 54,000 additional then-teens would live to 65 years of age. Examining the same tax increase, Warner (1986) noted that if the real value of the tax could be maintained. some 450,000 premature deaths caused by smoking would ultimately be avoided. Note that this extraordinary health achievement was estimated to result from a small tax increase.

Beyond the health impact, there are many other powerful arguments that support sustained increases in tobacco taxes:

• Increased tobacco taxes can raise considerable revenue. US tobacco taxes in 1991 amounted to $13 billion. By comparison, Canada, with one tenth the population of the States, raised over $6 billion, and the UK, with less than a quarter of the US population, raised $10 billion. There is little doubt that the United States could be raising at least $30 billion more annually, even taking into account the substantial drop in smoking that would be expected to follow the tax increases.

• Those additional billions of tax dollars could fund better health care provision, school programs, nutrition programs—or simply be used to reduce the deficit or reduce other taxes (higher tobacco taxes do not have to mean higher overall taxes).

• Smokers do not derive the entire economic benefit from keeping taxes down. The tobacco companies are given greater freedom to increase their own prices, thus increasing their profits and their economic and political power. As an example, Philip Morris reports that it sold 191.2 billion cigarettes in the United States in 1980 and had operating income of $786 million from those sales. By 1991 sales had increased by 15% but operating income had increased by over 500% to $4.8 billion. This income level represents, in 1991 alone, three and one half billion dollars more than would be required to have simply kept pace with inflation. In the absence of tax increases, tobacco companies show no plans to restrain their own price increases. If prices are, instead, raised through tax increases, the health impact is realized while providing revenue for important national and local programs.

• People are prepared to vote for higher cigarette taxes, as the recent experiences in California and Massachusetts make clear. In fact polling from around the country shows strong support for tobacco tax increases, particularly when introduced as part of a comprehensive program.

If we use the intensity of the industry's opposition to any given measure as the true indication of its probable impact on consumption, the tobacco industry has clearly acknowledged the impact

Figure 3

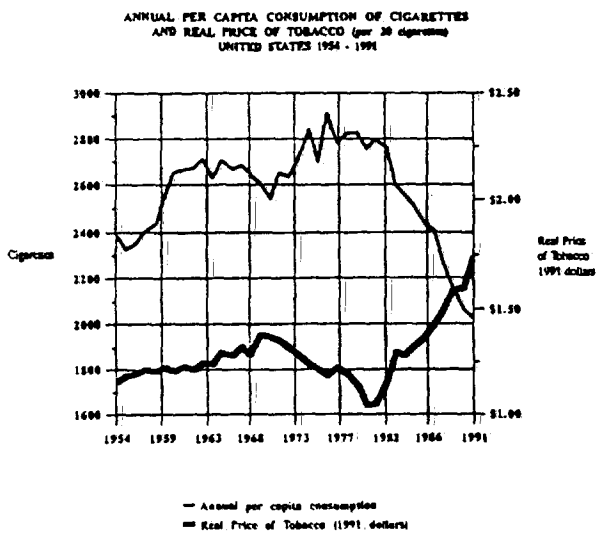
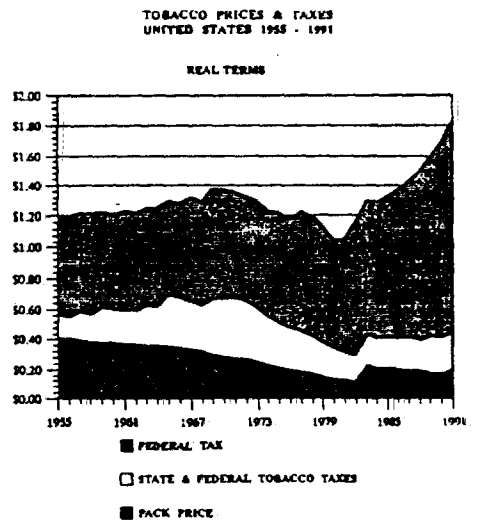


Figure 4



that tax increases can have. We need only look at the recent multi-million dollar (but unsuccessful) effort mounted by the industry to oppose a 25 cent per pack tax increase in Massachusetts.

Tobacco Industry Arguments against Tax Increases

The industry uses numerous arguments to defend its profits. To accept them means to accept a huge continuing death toll from smoking. These arguments are either bogus or can be met in a way that is less dangerous to public health than perpetuating the sale of low priced tobacco:

• In tobacco-growing states, the industry will argue that increased taxation will devastate tobacco farmers. In fact in-state consumption, even in the largest tobacco growing states, is insignificant compared to out of state consumption. Governments would ordinarily have to forgo over $100 in potential revenue for every dollar of retained sales by its tobacco growers. The key point is that *farmers*, as opposed to the tobacco manufacturers, make so little out of the sale of each cigarette that they could easily be compensated for the adverse income effects of any fall in sales—and encouraged out of tobacco growing.

• In states with tobacco manufacturing facilities, the industry will argue that jobs could be lost. Again, since little of what is produced in-state is actually consumed there, the impact is quite small. When these jobs are then measured in terms of taxes forgone per job saved, or lives lost per job saved, the industry's argument becomes absurd.

• In states with no serious tobacco industry presence—the vast majority of US states—the arguments will be made about the impact on local retailers. In such states a substantial proportion of expenditures on tobacco products are immediately "exported" to tobacco companies and tobacco states. Increased taxes will increase state revenues, and spending reallocated to other goods and services will produce more jobs, as a larger fraction of such expenditure will remain in-state.

• The industry will also attack tobacco tax increases with the argument that all taxes are bad and must be avoided. The fact is that governments need money. While an income tax can discourage working, and investment taxes can discourage savings and investment, tobacco taxes discourage the use of our leading cause of preventable death. If any taxes are to be increased, it makes sense to increase the ones which discourage behavior society seeks to discourage.

• The industry presents itself as the defender of the poor. It will argue that higher tobacco taxes are a regressive form of taxation, that they hit the less well-off far more than the better-off. That is due in part to the fact that the better-off and better-educated have responded to health information, while the poor have been targeted by an industry anxious to hang on to customers. The industry never points out that:

• for all its concerns about the poor it has been raising tobacco prices over the past decade, at rates well in excess of tax increases, to boost its own profits;

• that the money raised from higher taxes could be used to fund projects, tax or welfare changes that would improve the lives of the poor.

• that the real "regressivity" is the higher rates of death and disease among the poor resulting from their continued addiction to tobacco, fostered by targeted industry ad campaigns.

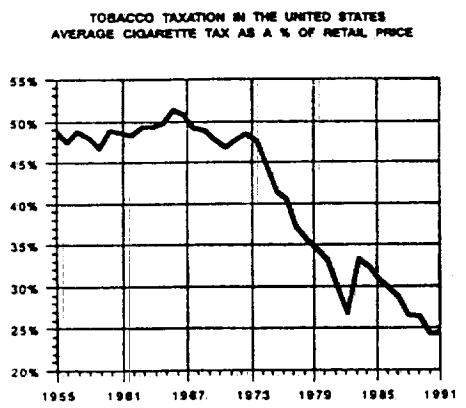
Developing a Strategy

Drawing on these facts and arguments, the key is to start influencing leading opinion-formers, legislators, health and medical organizations and the public at large about the role tobacco taxes can play in both health and fiscal policy. This means directing information and lobbying efforts both at those interested in health and those responsible for finance, at the state and federal level. It means tailoring the argument to local circumstances. It means beginning to understand the budget process and getting the right information to the right people at the right time.

Recent experience at the state level suggests this can be done. This should be replicated in states that have not raised taxes recently, and progress should be maintained in states which have, since the effect of a one-time nominal tax increase is undermined every year due to inflation. Individual states can start following their neighbors' lead. That, in turn, reduces the risk that some of the impact of higher taxes could be diminished by increased cross-border shopping for cigarettes.

By far the most dramatic impact would come from a substantial hike in the federal tax. In 1951 the federal tax was set at 8 cents a pack. It stayed there for over 30 years. If the federal tax was adjusted merely to cover inflation since 1951, it would be about 43 cents in 1993 rather than 24 cents. That would do no more than return the tax level to that prevailing before the risks of smoking were known. But it would be a start. Far more significant would be an increase that reflects the fact that taxes, to complement health goals, should be significantly higher than they were before we knew the magnitude of the health problem. This has been achieved in our neighbor to the north, Canada, and in many other industrialized nations around the world.

Figure 5



Can it be Done?

The simple answer is: yes. In fact some states have already moved and many others are in the process. Other countries have tobacco industries, tobacco lobbies, tobacco farmers and large numbers of tobacco users, and have attained substantial increases in tobacco taxes. Canada is a prime example. In the early 1980's, Canada's tobacco taxes were lower than the rates presently found in the United States. Despite vigorous opposition from a powerful tobacco lobby, a concerted effort by Canadian health groups has led to taxes which now amount to about $3 (US) per pack. Canadian per capita consumption since 1983 has fallen by over 40%, half again as fast as that of the United States. Many other places, including Ireland, the United Kingdom, France, Sweden, New Zealand, Australia and Hong Kong have recently brought forward substantial tobacco tax increases.

The challenge to the American health community is to learn from previous efforts, create the infrastructure within health organizations necessary to direct this campaign, and to see if we can create a bigger and more decisive public health success story than has ever been achieved in this country. The prize will be millions of premature deaths avoided, and a bankroll of billions of additional dollars to assist financially strapped governments to serve the nation's people.

Recommendations

The participants of the workshop examined various options, including the position paper recently put together by the Coalition on Smoking or Health. That document calls for a federal tax increase of at least $2.00 per pack. Such an increase, if maintained in real value, is estimated to reduce cigarette use by roughly 25%, eventually preventing about two million tobacco-caused deaths while simultaneously raising $35 billion per year in additional revenue. The Coalition has also recommended increases of about $1.00 per pack in state excise taxes. There was very strong support for these goals. As such the workshop has made the following two recommendations:

1. The federal government should increase the cigarette excise tax by at least $2.00 per pack with an equivalent amount assessed on all other tobacco products. The real (inflation-adjusted) value of this tax should be at least maintained thereafter.

2. We encourage the individual states to increase state excise taxes by approximately $1.00 per pack with an equivalent amount assessed on all other tobacco products. The real (inflation-adjusted) value of this tax should be maintained thereafter.

Implementation

It was recognized that recommendations of this magnitude will have little chance of success without a serious effort on the part of the health community. It was agreed that a well-funded, professional campaign will be necessary and that it will need to be given operational independence while being simultaneously supported by a broad coalition of grassroots organizations. Infrastructure will have to be built to assist these efforts and significant sums of money will need to be raised. While our task is a big one, there was general agreement that the opportunity to save two million lives makes this not only an unprecedented opportunity but a potentially extremely cost-effective one. There was a recognized need to move quickly and decisively if we are to achieve these goals.

Appendix A

Average total taxes and tax incidence
of a pack of 20 cigarettes in various countries
as of October 15, 1992

Country	Avg. Total Taxes (American Dollars)	Tax Incidence
Denmark	$4.18	85%
Norway	$3.93	68%
Sweden	$3.77	73%
Canada (British Columbia)	$3.26	69%
Ireland	$3.13	75%
Finland	$2.86	74%
UK	$2.86	76%
Canada (Ontario)	$2.85	69%
Netherlands	$2.63	70%
Germany	$2.35	72%
Belgium	$1.94	73%
New Zealand	$1.92	68%
France	$1.56	71%
Australia (Victoria)	$1.46	60%
Italy	$1.32	72%
Japan	$1.09	60%
US (Hawaii)—Highest	$0.75	37%
US (Michigan)—Average	$0.52	29%
US (Virginia)—Lowest	$0.30	19%

Tobacco Marketing and Promotion

Alan Blum, MD
Matt Myers, JD

Introduction

In 1964, the Surgeon General's first report on smoking and health proved beyond any reasonable doubt that cigarette smoking is the single most preventable cause of premature death and disease in the United States. Nonetheless, despite repeated reports by governmental and private sector organizations which focus on the nature and impact of tobacco advertising and marketing, such promotion continues unregulated and unrestricted, and tobacco industry efforts to recruit new users, maintain current users, and silence its opponents continue unabated.

In providing an analysis of public policy options, this paper will briefly review the current data and literature about the significance of advertising and promotion of tobacco products in the United States. It will discuss the influence of cigarette and spitting tobacco advertising on young people, adults, and the media; how tobacco and health issues are covered in the mass media, how society views tobacco and tobacco advertising, and how the government responds to tobacco and health issues.

Nature and extent of tobacco advertising and promotion

How Much is Spent?

While the tobacco industry contends that tobacco advertising and marketing is not intended to and does not help to attract new smokers, in 1990 the tobacco industry spent over $3.9 billion—or more than $10.6 million a day—promoting its products. These figures represent an increase of over $370 million since 1989 and another increase of $342 million since 1988. Even when these expenditures are adjusted for inflation, the 1990 figures represent an increase of more than one hundred percent in advertising and promotion expenditures by the tobacco industry during the 1980s.

Today, annual expenditures on cigarette advertising promotion total more than $4 billion—or $14 for every man, woman and child in this country. The advertising promotional expenditure per carton is in excess of $1.35. In contrast, in 1980, after adjusting for inflation to constant 1989 dollars, the tobacco industry only spent $.58 per carton on advertising and promotion.

Tobacco Advertising and Promotion Expenditures

While tobacco industry advertising spending in magazines ($380 million in 1989), newspapers ($77 million in 1989), and billboards ($39 million in 1989), continue to be large enough to have a major impact on each of these media, such traditional advertising has been supplemented by other forms of promotion.

For example, point-of-sale advertising in retail establishments totaled $241 million in 1989, an increase of 99% from the previous year. Similarly, the amount spent on give-away non-cigarette utility items, such as calendars, lighters, and T-shirts, increased by over $72 million from 1988 to reach a total of $262 million in 1989. If this figure were to include retail value added give-aways, such as key chains and lighters, which are given as a bonus when a consumer purchases a pack of cigarettes, the expenditure would be far higher. (Incidentally, point-of-sale advertising and advertising on utilitarian items are exempted from the health warning requirements.)

Expenditures on the promotion of sports and sporting events also is growing. In 1989, the tobacco industry spent $97.7 million on sports and sporting events, an increase of more than 8% in one year from the $84 million spent in 1988. Such activities include golf, tennis, and various froms of motor racing. Tobacco billboards also continued to be the dominate advertisements in many major professional stadiums in which non-tobacco sponsored events are played and televised.

A number of promotional themes and campaigns that began in Europe have found their way to the United States. For example, in 1992 Philip Morris announced a new campaign entitled the "Marlboro Adventure Team ...Ten guys who will hike and bike, as well as ride the rapids of the Southwest." According to Philip Morris, as of March 1993, more than 300,000 people had applied to participate in the events.

Doubtless the most significant trend in tobacco advertising expenditures—and the least addressed by tobacco control advocates—is that of promotional allowances, such as the amount paid by cigarette companies to retailers for shelf space, cooperative advertising with retailers, trade promotions to wholesalers. Promotional allowances, which constitute the single largest advertising category, totalled $999.8 million in 1989. Discount coupons and retail value added promotions, such as multiple pack promotions and offers of a free key chain or lighter (blister-packed to a cigarette pack), comprise the second largest advertising and promotional expenditure by the tobacco industry. In 1989, $959.9 million was spent on this type of advertising and promotion. Health advocates have devoted scant attention to an examina-

tion of the role such promotions have had in counteracting the intended cigarette consumption-reducing effect of excise taxes.

The amount of money being spent on discount coupons, give-aways, and cut-rate cigarettes illustrates the emphasis placed by the tobacco industry on those consumers who have fewer dollars to spend on tobacco. While such emphasis may, in part, be a reaction to the recent recession, it also appears to represent a strategy designed to offset any reduction in cigarette consumption as result of increased excise taxes, as well as knowledge by the tobacco industry that the prevalence of smoking is inversely proportional to income.

Targeted marketing

Tobacco Marketing and Youth

Cigarette manufacturers say they do not market to young people do not want children to smoke. Indeed, Philip Morris and R.J. Reynolds have created national advertising campaigns built upon prevalence theme. However, the tobacco industry's claims are contradicted by its heavy use of image-based advertising in contexts where the ads will be observed by young people.

Each year, more than three million American young people under the age of 18 consume 947 million packs of cigarettes. Almost 90 percent of all new smokers start by the age of 21. The age of initiation of smoking has declined over the last 40 years by 2.4 years overall and 5.4 years for white females.

It is no coincidence that teenagers smoke precisely those brands with advertising messages which appear to be targeted at adolescents. A 1989 CDC study, confirming an earlier study conducted by DOC (Doctors Ought to Care) regarding cigarette brand preferences among adolescents, found that 71 percent of white teenagers who buy their own cigarettes smoke Marlboro, while 61 percent of black teenagers buy Newport, a menthol brand. Camel represents the second most popular brand among white youth, while for blacks, the next most preferred brands are Kool and Salem, two other menthol brands. In two recent surveys, at least 84 percent of the adolescent current smokers who usually bought their own cigarettes purchased one of three most highly advertised targeted brands—Marlboro, Newport or Camel—each of which emphasizes image-based advertising. The same surveys found that brand preference is much more concentrated among adolescents who smoke than among adults who smoke.

For years, Marlboro has been the predominant brand used by adolescents, who appear to be attracted to the brand's image of strength and independence promoted in the long-running "Marlboro Man" advertising campaign. The longstanding success of Marlboro has been partly explained by William J. McCarthy and Ellen Gritz, who examined the psychological and social factors that influence teenagers to smoke. According to testimony provided by Dr. McCarthy before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce,

"To the degree that adolescents consciously try to reduce the distance between their ideal self-image and their own self-images, and the scientific literature supports that they do, there is reason to conclude that the personality traits popularly imputed to cigarette smokers and cigarette advertisements are sufficiently alluring to induce adolescents to smoke....For the typical teenager seeking to make his/her real self correspond more closely to his/her ideal self, the portrayal in cigarette ads of valued aspects of identity such as independence, social and physical attractiveness and confidence cannot fail to make cigarettes appear more attractive to teenagers than they would be without such associated imagery."

The Joe Camel cartoon caricature introduced in the US in the mid-1980's contains none of the subtlety of the Marlboro cowboy, but few advertising campaigns have been more effective in such a short period of time with young people. In 1986, Camel ranked seventh among the youngest age group of people who smoke. In 1989, one year after the advertising campaign began, the brand ranked third among teenagers surveyed.

Three studies published in the December 11, 1991 issue of the *Journal of the American Medical Association (JAMA)* confirmed what every expert (and anyone with common sense) had already concluded. Whatever the intent, the "Old Joe" cartoon camel advertising campaign had its greatest influence on children and adolescents. Two of these studies specifically examined the influence of the "Old Joe" campaign on teenagers.

Both studies of teenagers found: (1) that teenagers are far more likely to have seen and remember these advertisements than adults; (2) that teenagers associated these advertisements with the product being advertised far more than adults; and (3) most importantly, a stunning and dramatic rise in the use of Camel cigarettes directly paralleled the introduction and pursuit of this advertising campaign.

The same two studies documented an explosive growth in the sale of Camel cigarettes in pre-teens and adolescents. While surveys conducted on seven different occasions between 1976 and 1988 among seventh to twelfth graders revealed that only 0.5 percent of those surveyed used Camel cigarettes, the study released in the December 1991 issue of *JAMA* of the same age group in 1990 found that 32.8 percent reported using Camel cigarettes. The second study found that among teens and pre-teens surveyed the use of Camel cigarettes rose 230 percent between 1986 and 1990.

As shocking as are the results of these two studies, a third study published in the same issue of *JAMA*, which examined the influence of this campaign on three to six year old children, is even more disturbing. Among six year olds surveyed, nearly as many of the children could identify an illustration of the "Old Joe" camel cartoon logo as could identify a commonly used logo of Mickey Mouse.

The "Old Joe" campaign has combined every marketing tool available to the tobacco industry to reach out to children. Not only do the print advertisements using "Old Joe" stress themes that uniquely appeal to young people, but the overall campaign has also included free T-shirts, baseball caps, posters, inflatable air mattresses, and other items of clothing far more likely to be worn or used by adolescents than by adults. Further, the campaign has

made heavy use of discount coupons. At least one advertisement went so far as to explain to individuals who do not like to redeem coupons (that is, children too young to legally do so), how to ask a friend or a stranger to do so for them.

While the "Old Joe" campaign's appeal to youth is so blatant that *Advertising Age* has editorialized that this campaign "crossed the divider between [a company's] legal right to advertise and its unique social responsibility to the general public", the advertising campaign has continued unabated. However, those concerned about the influence of advertising on young people also should not lose sight of the fact that while "Old Joe" has prompted a public outcry for reform, countless other image-based ubiquitous cigarette advertising campaigns, exemplified by the "Marlboro" cowboy and Virginia Slims models, pose every bit as serious a problem.

Tobacco Marketing and Women

Over the last 25 years, tobacco marketing targeted at women has become evermore pervasive. It was less than 30 years ago that the first cigarette introduced *solely* for women was brought on the market. It is no coincidence that advertising campaigns targeted at women preceded and then accompanied the rapid spread of smoking among teenage girls in the United States in the late 1960s and the early 1970s. Taking advantage of major changes in social attitudes about the role of women in our society, the tobacco industry in the late 1960s began a massive campaign to associate smoking with independence and social progress—the type of values portrayed by Virginia Slims advertising campaigns.

While the tobacco industry has long marketed tobacco products to women implying that smoking provides a mechanism for staying thin, the 1980s witnessed an explosion of advertising using false images that link smoking with tall, thin, elegant, attractive women using advertising slogans which associate tobacco use with good health through thinness and weight reduction. Recent advertisements for Super Slims from Virginia Slims feature photographs of tall, ultra thin young women dressed in tight, revealing clothing whose images have been elongated and bodies made to appear even more slender through trick photography. The ads make use of words with double meanings, all of which have weight or thinness-related meanings, such as "Ultra Light", and tag lines, such as "We can't make your calls shorter, just slimmer." Ads for Capri Super Slims carry the bold slogan, "The Slimmest Slim."

The 1989 Teenage Attitudes and Practices (TAPS) Survey of adolescents found that while non-smoking adolescent girls strongly disagree with the statement that smoking helps keep weight down, the survey found that among current teenage girls who smoke, over 66 percent of those surveyed agreed with the statement that smoking helps keep one's weight down. The 1986 Adult Use of Tobacco Survey found that 52.7 percent of all women age 21 through 49 strongly or somewhat agreed with the statement that smoking helps control weight.

These ads are successful. In the 1960s, far more teenage boys smoked than teenage girls. In the 1970s, teenage girls were the only population cohort where smoking actually increased. Today, teenage boys and teenage girls smoke in almost equal numbers.

Tobacco Marketing and Ethnic Minorities

The tobacco industry has been especially adept at exploiting racial identity in defining a profitable market among ethnic minorities. The result is an increase in smoking-related disease and death among targeted ethnic groups in the US.

Seeking new markets through advertising and promotional campaigns in certain minority communities has been a necessity for tobacco companies as the smoking white male population has decreased in the US during the past two decades. While major daily newspapers have experienced a decrease in revenue from cigarette advertising accounts, the African American-owned and Hispanic-owned newspapers continue to be a major context for cigarette advertising targeted to these specific ethnic communities.

Tobacco companies and the minority press have become allies in the effort to promote cigarettes in ethnic communities and inner-city neighborhoods. In November 1985, Philip Morris hosted 93 publishers of the African American newspapers at its corporate headquarters in New York for a forum on preserving freedoms in American life. Early in 1986, these publishers voted to condemn attempts to restriction on tobacco advertising. In 1990, the National Association of Hispanic Publications made a similar statement. The 350 Hispanic newspapers that belong to the association receive about 20% of their advertising revenue from alcohol and tobacco companies.

Perhaps the greatest concentration of tobacco company advertising is in African American publications such as *Jet*, *Essence*, and *Ebony*, which reach 47 percent of African American women and 38% of African American men. Despite frequent health topics head-lined on the front covers of *Ebony* and *Essence*, *Ebony* has never published a major article on the leading cause of death among African Americans: tobacco, in its 40-year history. *Essence*, which positions itself as a Black lifestyle magazine, has never published an article on smoking, much less on cigarette advertising.

Billboard and transit advertising, while not African American- or Hispanic-owned, represent an important media within these communities. Studies conducted by Scenic America and other organizations have shown disproportionate advertising of tobacco and alcohol products in inner-city neighborhoods. In many African American and Hispanic neighborhoods, virtually 80% to 90% of all billboard advertising is for brands of tobacco and alcohol. In African American communities especially, cigarette advertising is the single common theme in a variety of retail outlets from food stores and supermarkets to beauty parlors and barber shops (as well as dry cleaners, laundromats, gas stations, and bars and grills).

Ironically, money saving offers are perhaps the major appeal that the tobacco industry makes to the people with the lowest disposable income. There has been a dramatic increase in the number

of rebate coupons in magazines and newspapers, and in-store discounts good for up to 50% off on cigarette packs. In a suburban, predominently white neighborhood, promotions include a free t-shirt or other item for the purchase of three packages of cigarettes. The same promotional offer in an African American or Hispanic neighborhood is available for a one-pack purchase. The free distribution of sample packs is also common in inner-city communities.

Tobacco companies have also linked cigarette promotions to African American and Hispanic music and cultural events. R.J. Reynolds and United States Tobacco (UST) sponsor Hispanic street fairs and festivals, such as Cinco de Mayo celebrations, and Brown and Williamson foots the bill for numerous Spanish and jazz musicals in Hispanic communities. Brown and Williamson also presents annual "Kool Achiever" awards (named for Kool cigarettes) to people who want to improve the "quality of life in inner-city communities." The tobacco company has even enlisted the National Urban League, the National Newspaper Publishers Association, and the NAACP in the nominating process. Johnson Publications, publishers of *Ebony* and *Jet*, adds another insidious twist by permitting itself to be the apparent sponsor of a national traveling fashion fair that is in large part paid for by R.J. Reynolds to promote its More brand of cigarettes. Similarly, Philip Morris has sponsored cultural events such as the Alvin Ailey American Dance Theatre, jazz and blues concerts, and a photographic display of the late Dr. Martin Luther King, Jr.

In 1990, R.J. Reynolds announced plans to launch a new menthol cigarette brand called Uptown (more than 65% of blacks who smoke buy menthol brands). Philadelphia, Pennsylvania was selected as the test market for a promotional blitz aimed at young urban African Americans. However, before the tobacco company could get its marketing off the ground, a local group calling itself the Uptown Coalition was formed by Dr. Robert Robinson, then with Fox Chase Cancer Center. With the help from other health advocacy groups and a blast at R.J. Reynolds by Secretary of Health and Human Services Louis Sullivan, the Uptown Coalition was successful in preventing the test market of the brand. Despite the Coalition's success, R.J. Reynolds began an aggressive national campaign for Salem cigarettes ("The Box") in inner-city African American neighborhoods for which Uptown had been intended. Similarly, other cigarette brands popular among African Americans, such as Newport and Benson and Hedges, continue to be agressively marketed in much the same way.

Tobacco advertising and promotion: Market expansion or brand switching

The tobacco industry claims that the $4 billion it spends each year on cigarette advertising is intended only to maintain "brand loyalty" and that it does not seek to attract new smokers, (or, conversly, that cigarette advertising is only designed to persuade smokers to switch brands). The tobacco industry has further argued that unless those who are concerned about the impact of tobacco can prove that advertising and marketing actually causes people to start or not to stop, cigarette advertising and marketing should remain unrestricted.

In support of its position, the tobacco industry often quotes out of context a single sentence in the 1989 Report of the Surgeon General that states "There is no scientifically rigorous study available to the public that provides a definitive answer to the basic question of whether advertising and promotion increase the level of tobacco consumption."

However, the tobacco industry consciously and deceitfully fails to put the sentence in context by omitting the following sentences from the Surgeon General's Report which appear immediately after the quoted sentence:

"Given the complexity of the issue, none is likely to be forthcoming in the foreseeable future. The most comprehensive review of both the direct and indirect mechanisms (whereby advertising may affect consumption) concluded that the collective empirical, experiential, and logical evidence makes it more likely than not that advertising and promotional activities do stimulate cigarette consumption."

Aside from its dishonesty, the tobacco industry's position lacks merit for three distinct, independent reasons. First, the point of the Surgeon General, as stated in testimony before the Subcommittee on Transportation and Hazardous Substances of the Energy and Commerce Committee of the United States House of Representatives on September 13, 1989, is that a perfectly designed study to prove that cigarette advertising increases cigarette consumption will probably never be accomplished because proof of that type in a single study is virtually never available "when studying human behavior." The overwhelming evidence demonstrates that tobacco advertising and marketing practices do have an impact on the use of tobacco in a variety of complex, interrelated ways that are not capable of being proven or disproven in a single study, but are no less significant.

Second, the tobacco industry has attempted to manipulate the debate into a focus on the availability of a single scientific study precisely to avoid public policy action in much the same way that the tobacco industry established the Counsel on Tobacco Research to avoid public policy action on the health effects of tobacco long after more than enough evidence was available to act. Third, in light of the available data, the uncontroverted health effects of tobacco use, and the stated goal of our government to discourage tobacco use, especially among children, the burden should be on the tobacco industry to demonstrate that its $3.9 billion marketing effort does not play any role, direct or indirect, in the uptake of tobacco use rather than on those responsible officials concerned about the health of our nation to prove to the contrary.

The data demonstrating that marketing and advertising of tobacco products does play a role in tobacco use comes from many disciplines and from many sources. Combined, it can lead to only one conclusion. Briefly, these data fall into six categories.

1. The tobacco industry annually loses more of its customers than do the manufacturers of any other product. An average of 1.5 million Americans quit smoking each year and an additional 434,000 die from smoking-related causes. Since over 90 per-

cent of all new smokers are under the age of 20, this means that thousands of children have to begin smoking each day in order for the tobacco industry to maintain the status quo. The tobacco industry knows that if one hasn't started smoking by their 18th birthday, they only have a one in ten chance of ever doing so.

2. Only a small percentage of all smokers switch brands each year. Three manufacturers currently sell over 80 percent of all cigarettes sold in the United States. Thus, too few smokers switch to justify a $3.9 billion expenditure each year. Also, many of those who do switch simply switch to a different brand of the same manufacturer. If the sole purpose of advertising was brand switching, the three major tobacco manufacturers would make far more money if they agreed to discontinue tobacco advertising and marketing because they spend far more each year on advertising and marketing than they make by acquiring new smokers from their competitors.

3. Tobacco advertising has been shown to work. Advertising campaigns targeted at women preceded and then accompanied the rapid spread of smoking among women. Advertising campaigns on behalf of smokeless tobacco products preceded and then accompanied the rapid rise of the use of smokeless tobacco products by teenagers. The recent "Old Joe" advertising campaign has documented the dramatic influence over a short period of time a single advertising campaign can have on tobacco use among adolescents. None of these changes in smoking rates can be primarily explained by any factor other than the impact of advertising and marketing for specific brands.

4. Advertising experts agree that market expansion is a significant objective of advertising for virtually all products. There is no evidence that advertising operates differently for tobacco products. Tobacco is not the type of mature market where new consumers do not need to be attracted. The mature market argument applies in situations where a society becomes fully educated as to the need for and benefits of a product and will continue to purchase that product without further education or persuasion. Many household products, such as soap, tissue paper, or laundry detergent fall into this category. However, tobacco is different. Given the educational efforts to discourage people from using tobacco products and given the known health hazards of tobacco products, each new generation of children must be convinced and persuaded of a reason to buy the product. Thus, by depicting tobacco products as an integral part of a highly desirable lifestyle and personal image, tobacco advertisers attract individuals who do not currently use that product, but who want to emulate that lifestyle and project a depicted image. Advertisements that effectively associate smoking with the latest trends or ideas or with independence, sophistication, sexual, social, or athletic success and happiness attract smokers and non-smokers alike who want to be like the people in the ads.

5. If advertising does not increase consumption for tobacco products, why do state monopolies advertise in countries where there is no competition? At one time or another, several countries which then had state monopolies, including Austria, Japan, South Korea, Thailand, and Turkey, have engaged in widespread cigarette advertising.

6. The tobacco industry has generated considerable debate over what can be learned about the role of advertising from the international experience of countries that banned advertising after previously permitting it. While several countries with free market economies have enacted statutory bans on the advertising and/or promotion of tobacco, only a few have instituted *effective* bans. Even fewer countries have combined those bans or restrictions with a comprehensive smoking-education program or counteradvertising campaign.

While the tobacco industry has funded a study which manipulates the data in an effort to make it appear as if restrictions or bans on tobacco advertising have had no impact, an increasing number of impartial governmentally funded studies provide substantial evidence to the contrary. A 1989 study by the Government of New Zealand provided persuasive evidence that in those countries which enacted serious bans, there was a measurable overall decrease in tobacco use from what would have existed had there been no ban and/or restriction.

In 1993 the Chief Economic Advisor of the Department of Health of the Government of Great Britain issued a report which found that advertising tends to increase consumption of tobacco products and that bans on tobacco advertising tend to result in a decrease of tobacco use from what would have occurred in the absence of such a ban. The report considered 19 key studies from the United Kingdom, United States and elsewhere. Focusing on the four countries with the most sufficient data—Norway, Finland, Canada and New Zealand—the report's author found that in all four countries, bans or restrictions on advertising resulted in an overall decrease in consumption.

The limitations of these data must be understood. Multiple anti-tobacco actions accompanied the advertising ban. It is impossible to know the effect of the advertising ban alone. Nonetheless, the data from these countries show a positive correlation between eliminating advertising and promotion and a declining percentage of young people who smoke.

Despite any argument the tobacco industry decides to proulgate during the debate on cigarette advertising, everyone can agree that an advertisement for cigarettes, regardless of brand, is an advertisement to smoke.

Current governmental restrictions on tobacco advertising and promotion

At the federal level, there has been remarkably little done to restrict the influence of tobacco advertising and promotion.

In 1965, Congress rejected a proposal by the Federal Trade Commission to require detailed health warnings on all cigarette advertisements and packages and, instead, required only that all cigarette packages carry the following message: "Caution: Cigarette Smoking May Be Hazardous To Your Health." No warning

was required on cigarette print advertisements at that time. In 1969, Congress amended the message on cigarette packages to read, "Warning: The Surgeon General Has Determined That Cigarette Smoking Is Dangerous To Your Health" and banned cigarette advertisements from the broadcast media after January 1, 1971. But at the same time, Congress preempted the Federal Trade Commission (FTC) from imposing any health warning requirements on cigarette print advertisements for a period of two years. When the Congressional preemption expired in 1971, the FTC and the six major tobacco manufacturers entered into a consent decree by which the companies agreed to include the mandated package warning in their print advertisements.

For the next decade, neither the FTC, nor Congress took any further action to limit tobacco advertising or to require tobacco companies to do more to educate the American public about the health hazards of smoking. In 1981, the Federal Trade Commission issued a report which found that the then-existing health warning on cigarette ads and packs was inadequate and recommended that Congress take additional action to remedy the situation. In 1984, Congress enacted the Comprehensive Smoking Education Act, which replaced the single health warning on cigarette ads and packages with the four health warnings which now appear. A similar set of warnings was required for smokeless tobacco products by Congress through the Comprehensive Smokeless Tobacco Health Education Act of 1986.

Congress has otherwise imposed no restrictions or other requirements which directly affect tobacco advertising and promotion. The Food and Drug Administration takes the position that it has no authority over tobacco products or their advertisements as long as the ads make no health-related claims. The authority of the Federal Trade Commission over tobacco advertising promotion is limited to enforcing the warning label legislation and to carrying out its traditional mandate to prohibit false or deceptive advertising, an authority which the FTC has exercised only rarely.

In 1992, for the first time, Congress took a step to restrict the sale of tobacco products to individuals under the age of 18 as part of the Alcohol/Drug Abuse and Mental Health Administration Reorganization Act. In that Act, Congress limited the right of the Secretary of the Department of Health and Human Services to make certain state funding grants unless the state involved has a law making it is unlawful for any manufacturer, retailer, or distributor of tobacco products to sell or distribute such products to any individual under the age of 18, and unless the state has submitted a plan to indicate that it will enforce such a law in a manner "that can reasonably be expected to reduce the extent to which tobacco products are available to individuals under the age of 18."

Public policy options

Given the nature, extent and impact of tobacco advertising and promotion today, the two questions are: (1) What should be done to most effectively reduce and counter the influence of advertising and marketing on tobacco use in the United States today, and (2) given the political realities, what, if any, actions should be taken to eliminate or counter the most egregious tobacco advertising abuses while progress is made towards long-term goals?

The following policy options are not new, but neither have they been adopted nor implemented:

Proposal I:

Ban Advertising and Promotion

A ban on advertising and promotion would eliminate all advertising of any kind for tobacco products, including all billboards, print advertisements and utilitarian items, such as T-shirts and hats. It would also prohibit tobacco companies from sponsoring events such as rock concerts and tennis tournaments under the cigarette brand names. Organizations such as the American Lung Association, the American Heart Association, the American Cancer Society and the American Medical Association have endorsed a ban on advertising and promotion. Legislation to ban all advertising and promotion of tobacco products was first introduced in Congress in 1986 and has been introduced again in the 100th and 101st Congresses without being enacted.

Pro

A ban would not only eliminate the direct influence of tobacco marketing efforts, such as the lure of seductive advertisements and billboards, but the indirect effects as well, such as the inadequate coverage of the health consequences of smoking by advertising-dependent news media.

Recent US Supreme Court decisions support the position that a legislatively mandated ban on tobacco advertising and promotion would probably be upheld as constitutional, if it were based on the government's desire to reduce the number of deaths caused by tobacco usage by reducing the prevalence of smoking.

Con

Opponents of an advertising ban raise three principal objections: 1) an advertising ban is unconstitutional; 2) a ban would be ineffective in reducing the prevalence of smoking; and 3) a ban would lead to bans on other consumer products.

The debate over an advertising ban is made more complicated because it engenders opposition by the mass media, who have become dependent upon tobacco advertising dollars and who argue that they would be financially hurt by eliminating these revenues. Organizations, such as the American Civil Liberties Union (ACLU) have expressed First Amendment concerns. Further, the proposed ban also engenders opposition by many arts and minority organizations, which receive substantial financial support from tobacco companies.

Proposal II:

Develop a Mechanism to Fund and Produce an Effective Ongoing Counter-Advertising Program

Counter-advertising is often mentioned as an alternative or complement to restrictions on tobacco advertising. Counter-advertising may indeed lend support for restrictions only cigarette

advertising. To be effective, counter-advertisements need to be professionally produced and placed frequently in often-seen media. This requires adequate funding to purchase advertising space and time on television and radio. The success of the program cannot depend on the media's good will in placing these ads for free (public service announcements). Small-scale pioneering paid counter-advertising programs were begun in the 1970's and 1980's by DOC and by media consultant Tony Schwartz. Major counter-advertising programs have been launched by several states in Australia. In the US, voters in California and Massachusetts approved referenda to increase cigarette excise taxes, a portion of which are dedicated to paid counter-advertising to discourage smoking. A bill introduced by Senator Ted Kennedy to fund a federal agency to purchase counter-advertising did not pass in the 100th Congress.

Pro

Supporters of this approach point to the fact that anti-tobacco counter-ads run in the late 1960s-prepared as a result of applying the Fairness Doctrine to tobacco advertisements on television and radio-accompanied a significant decline in tobacco consumption. Studies demonstrate that the counter-ads played an important role in reducing tobacco consumption during this period of time.

A major advantage of this option is that it involves no restrictions on speech. Thus, it obviates any argument of First Amendment concerns even by the most zealous supporters of the tobacco industry and the ACLU.

Con

The largest obstacle to creating an effective counter-advertising campaign is financing. In the late 1960s, counter-advertisements were broadcast on television and radio without charge, as required by the Federal Communication Commission. Today, an effective health campaign would require substantial funding to compete successfully against the $4 billion spent annually by the tobacco industry. Given the high federal budget deficit, it would be difficult to obtain an annual appropriation of this amount. One funding option is to earmark a portion of the cigarette excise tax for this purpose. Each penny of the federal tax generates almost $300 million, so a relatively small increase dedicated to counter-advertising could provide measurable returns.

Another funding option is to require that tobacco advertisers provide funds to purchase space for counter-ads on a proportional basis to their advertising expenditures. Or, this proposal might be combined with the proposal to eliminate the tax deductibility of tobacco marketing expenditures, and earmark a portion of the additional taxes received for counter-advertising.

Proposal III:

Eliminate Advertising Expense Deductions

This proposal would deny tobacco companies a tax deduction for cigarette advertising expenses. Currently, tobacco comapnies can deduct 100% of their advertising expenses as a business expense. Senator Harkin (D-IA) introduced legislation to this effect near the end of the 102nd Congress, but it was defeated, 56-38.

These proposals would not prohibit tobacco manufacturers from advertising, but would eliminate the manufacturers' privilege of deducting these expenditures from their taxes as tax-deductible business expenses.

Pro

The tobacco industry saves over a billion dollars each year because its huge advertising and promotion budgets are tax-deductible. Removing this governmental privilege would substantially increase the cost of advertising and promotion and presumably, reduce tobacco manufacturers' financial incentive to spend so heavily. This proposal also relieves American taxpayers of some of the burden of subsidizing the tobacco manufacturers' marketing efforts.

Further, the Supreme Court has made it clear that a company does not have a constitutional right to such a tax deduction.

Con

Opponents of this legislation have argued that this approach is an unconstitutional restriction on free speech. The constitutional challenge to eliminating the advertising tax deduction has even less merit than the challenge to an outright advertising ban. Congress has broad latitude in establishing classifications within the tax code which confer benefits on some groups that are denied to others.

Proposal IV:

Tombstone Advertising

"Tombstone advertising" is an alternative to proposals to ban tobacco advertising or eliminate the tax deduction for tobacco advertising expenses. There are a variety of configurations of tombstone advertising, but the most common would prohibit the use of models, slogans, scenes or colors in tobacco advertisements or on tobacco packages. Only text would be permitted. Restricting tobacco advertising or tombstone advertising could also be tied to strict limits on tobacco promotions and brand-name sponsorship.

Pro

Many tobacco advertisements rely on slogans and images. By and large, these ads sell the potential smoker an image which he/she may wish to emulate. This form of image advertising is most effective with young people, who are very image-conscious, see tobacco use as one way of being somebody they are not and pay little attention to advertisements that are primarily text oriented. Restricting tobacco advertising to tombstone ads would be an action designed to reduce the effectiveness of tobacco advertising with young people by eliminating the form of advertising considered most persuasive with this group. It would eliminate both the Marlboro cowboy, "Old Joe" and the image projected by Virginia Slims advertisements.

Thematic imagery ads are not just aimed at the young, but also at women and minorities. Strictly prohibiting the use of thematic imagery would dramatically alter tobacco industry marketing towards these groups as well.

Tombstone advertising does not restrict what a tobacco manufacturer can say about its products in its ads nor does it limit the amount a manufacturer can spend to advertise. Thus, it is likely to raise fewer free speech concerns.

Con

This proposal does not reflect an understanding of the importance of the brand-name of a product as an essential component of advertising. The brand-name itself is as important as any associated imagery. Moreover, unless a tombstone advertising policy also restricted promotional activities, its effectiveness would be limited. Cigarette marketing expenditures have steadily shifted from newspaper and magazine advertisements to promotional activities, such as sponsoring events, coupons and other price oriented mechanisms. Indeed, tobacco company expenditures for promotions now exceed expenditures on advertising.

Proposal V:

Enact a Version of the Tobacco Industry Advertising Code

The federal government could enact legislation modeled after the tobacco industry's voluntary advertising code, but with its most glaring weaknesses corrected. Among other things, the Code currently states that it prohibits advertising in publications directed at those under 21 years of age, the use of models under, or appearing to be under, 25 years of age, and advertisements suggesting that smoking "is essential to social prominence, distinction, success, or sexual attraction...." To date, the tobacco industry has used its Code as a public relations gimmick, but has never seriously abided by its provisions.

Pro

The principal advantage of this approach is that it simply codifies and creates an enforcement mechanism for principles that the tobacco industry itself purports to have adopted. It would be difficult for the tobacco industry to claim the new Code represents governmental restrictions on commercial speech, if the Code were based on the industry's own attempt to eliminate abusive advertising practices.

Con

Codifying the industry's advertising guidelines, or any other code of conduct, would require Congress to establish amorphous standards that might be difficult to enforce. For instance, what is a publication "directed primarily to those under 21 years of age?" How does one determine whether an actor appears to be under 25 years of age? Such a code would also likely permit the continued use of some of the marketing methods, such as the Marlboro Man, which are most effective with young people. Enforcing a "voluntary" code without restricting promotional activities would also fail to address one of the principal marketing techniques of the tobacco industry.

Proposal VI:

Eliminate the Federal Preemption of State Regulation of Tobacco Advertising

The Public Health Cigarette Smoking Act of 1969 prohibits states from enacting requirements or prohibitions based on smoking and health with regard to cigarette advertising or promotion. Repealing this clause would enable states to impose additional requirements and restrictions-including bans in appropriate circumstances-on tobacco advertising and marketing which take place wholly within their borders.

Pro

States should have the right to protect their own citizens; repealing this limitation would allow states to enact a variety of their own measures to discourage tobacco consumption within their jurisdictions.

Con

Opponents contend that repealing this provision would given states license to violate manufacturers' First Amendment rights and would create the possibility of 50 different states enacting 50 different sets of rules.

Proposal VII:

Enact Improved Warning Labels

The current warning labels required on tobacco products and advertisements were established by the 1984 amendments to the Federal Cigarette Labeling and Advertising Act. They were enacted because of the ineffectiveness of the then-existing warning label. Concerns have been raised about the effectiveness of the 1984 warnings as well, including the adequacy of the text of the current labels, the visibility of the warnings and the location of the current warnings.

Congress could amend the Act to require a different warning label format, content or location to help improve the labels' effectiveness on tobacco products and in tobacco ads. Information not now included, such as "Smoking is addictive," could be added.

This Act could also be amended to require a "circle and arrow" format similar to that required on smokeless tobacco products packages and advertisements. This graphic device would make the current warning labels more visible. If this were done, the size of the circle and arrow and warning label print might both have to be increased.

Congress should also consider placing the warning label on the front of tobacco packages to improve the frequency with which they are seen. Moreover, the health warning on billboards should be made more prominent: to be effective, they must be legible from a distance, and at high speeds.

Pro

Improved health warnings can be enacted without appropriating substantial additional funds and without raising new First Amendment concerns. They also can be tailored to fill in specific gaps in

consumer knowledge. Finally, the concept of a health warning is one legislators accept.

Con

Questions are raised about the effectiveness of warning labels as a major component of an anti-tobacco effort. Whatever role warning labels may play in a comprehensive tobacco education program, the increased benefit of strengthening the current warnings is difficult to predict with certainty. Warning labels have provided tobacco companies with added immunity from litigation even as they disarow the truth of the warnings.

Proposal VIII:

Authorize FDA to Regulate Tobacco Advertising

Federal laws and regulations of foods and drugs set very strict standards on how these products may be advertised and promoted. FDA has taken the position that it does not have authority over tobacco or tobacco advertising. Congress can remedy this by enacting appropriate legislation.

Pro

FDA regulations already contain dozens of restrictions on pharmaceutical advertising and promotion. These restrictions have in effect prevented pharmaceutical companies from certain types of advertisements aimed at consumers on television and radio, billboards and general circulation newspapers and magazines. Since tobacco and its components are more hazardous than many regulated drugs, the regulatory exemption of tobacco products is at best inconsistent. By providing the FDA with authority to regulate tobacco advertising, Congress could assure that a strict code is applied and avoid many of the difficulties in formulating new standards for tobacco advertising and promotion.

Con

Giving the FDA authority to regulate tobacco advertising and promotion will leave the degree of such regulation largely at the discretion of the federal agency. Regulation might increase or decrease based on the views of agency personnel at any given time.

Recommendations

1. Effectively pressure the government to enforce the existing law.

   a. Document the violation of the existing laws.

   b. Document the failure to enforce the existing laws.

2. Counter the tobacco industry's misinformation by educating the public.

   Develop a mechanism for an ongoing campaign to:

   a. Counter the brand-name images promoted by the industry.

   b. Educate the public about the effects of tobacco use and the tactics of the tobacco industry.

   c. Educate the public about the need for restrictions on cigarette advertising and promotion.

   d. Expose those who enter agreements with the industry to promote tobacco.

3. The group restates its long-term commitment to eliminate exploitation by the tobacco industry through advertising and marketing.

   a. It is in America's best interest to take into account the dynamic nature of the industry and for any ban to be broad enough to cover traditional forms of advertising and more recent trends like sponsorship, product placement, utilitarian items, etc. and learn from other countries where the industry has circumvented a ban.

   b. Any restrictions on advertising should move forward in sync with a counteradvertising and educational campaign.

   c. It must be recognized that there need to be a number of interim steps while any proposal for the elimination of tobacco marketing is debated. These include

      1. The items mentioned in priorities 1 and 2,

      2. Sustained educational campaigns on the evils of tobacco marketing, and

      3. Interim steps that attack tactics which have the greatest impact on children, such as sports and music sponsorship, utilitarian items, state action, etc.

4. Eliminate the tax deduction on tobacco advertising.

5. Increase the emphasis on what states can do: eliminate the federal preemption of tobacco advertising regulations by states.

6. Develop a mechanism or funding for current mechanisms to more effectively monitor and evaluate the tobacco industry's activities. Develop this research so we will have adequate data from which to develop strategies for the future.

7. Reject the tobacco industry's voluntary code in its current or any future form.

Challenges to ourselves

1. Challenge the leadership of our movement to develop a strategic plan for potential funding, and designate individuals and organizations to implement recommendations of each of the workgroups.

2. Identify and develop additional resources devoted to accomplishing the above.

3. Broaden the diversity of our group to include those being exploited by the tobacco industry.

4. Broaden our base of support in terms of numbers, meaning grassroots support.

5. Explore and assess the impact of warning labels in countries that require stronger labels.

6. Identify and develop leadership to implement recommendations and action steps.

International Health and Tobacco Use

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An estimated one billion persons smoked 5.2 trillion cigarette in 1988 resulting in 3 million deaths from smoking related diseases that year.[1] Of major concern is the fact that the burden of smoking related diseases will be shifted during the next two decades from developed nations to newly developed ones.[4,5] The World Health Organization (WHO) predicts the number of deaths will increase three-fold to 8 million by the year 2025.[4] According to WHO, progress made in curbing deaths from malnutrition and infectious diseases in lesser developed countries will be lost to deaths caused by smoking. Prevention of this future epidemic is one of the greatest public health challenges we face today.

Tobacco control policies have reduced smoking in the United States (US) and in many other developed nations. Smoking rates are declining 1.5 percent per year in the US and Western Europe, but rising 2 percent per year in lesser developed countries.[5] This increase is due to internal social and economic factors such as increased disposable income and women entering the work force. External pressure from Transnational Tobacco Companies (TTCs) is also contributing to the problem with the introduction of sophisticated cigarette marketing practices. Developing countries are also more dependent on tobacco taxes and jobs than developed countries, therefore, less likely to curtail the production and sale of cigarettes.[4,6]

The key to prevention of this future epidemic is passage of smoking control policies in newly developed countries including higher taxes, prohibition on advertising and promotions And restrictions on use.

Many newly developed countries maintain closed cigarette markets which limit the manufacture and sale of cigarettes to national firms or state owned tobacco monopolies.[7,8] Until recently, Asian nations such as, Japan, Thailand, Taiwan, and Korea severely restricted or prohibited sale of foreign brands. The centrally planned economies of Eastern Europe also excluded foreign competition with the exception of minor licensing arrangements to produce and sell foreign brands locally.[8]

A closed cigarette market may have the unintended effect of curtailing smoking. In the absence of competition, cigarettes are generally not advertised. There is little price competition and the "quality" of cigarettes is far below that of the highly flavored, easy to smoke international brands. Yet, as world trade is liberalized newly developed nations, rather than adopting smoking control policies, are likely to do the opposite over the next two decades.[7]

The perceived short term economic benefit of tobacco production may result in many nations expanding production and cigarette advertising.[8] An external force, US trade policy, also has been used to transform noncompetitive markets into competitive ones with the forced entry of international TTCs Philip Morris and RJ Reynolds into Asia.[9] In the case of Eastern Europe, the move to free markets has led to the complete acquisition of the former East Germany tobacco industry by the TTCs in 1989 and a purchase of majority interest in the Czechoslovakian and Hungarian tobacco industry in 1992.[10]

Tobacco Trade and Export Policies

Expanded world trade of tobacco and cigarettes is clearly not in the best interest of world health. Nor is the transfer of tobacco modern manufacturing and marketing technologies from the developed world to developing world. Yet, declining consumption in North American and Western Europe has resulted in the cigarette manufacturers from the US and Great Britain and the government of the US turning to these areas of the world for new smokers to replace those at home who have quit or died from smoking. Entry of foreign manufacturers into closed markets results in significant changes in the market which may push up consumption.

In 1984, the US amended the 1974 Trade Act allowing the President to investigate alleged unfair trade practices against US products by foreign countries. Section 301 of the trade law allowed the President to levy tariffs on exports to the US if a nation was found to unfairly restrain US imports. Given the high trade deficits with newly developed nations in Asia and the political power of the tobacco industry, four tobacco 301 investigations were conducted from 1985 to 1990 on the restrictions on import of US cigarettes to Taiwan, Korea and Japan. Trade threats were successfully used against these nations to repeal "restrictive" measures including bans and tariffs on US imports and advertising restrictions.[9]

Other US policies and programs have been used to further aid expansion of US cigarette companies into developing countries. During the 1970s and early 1980s, the US Department of Agriculture's Food for Peace Program exported over $1 billion in tobacco leaf to developing nations to help the local industry and increase demand for "lighter" US blended cigarettes.[4] Tobacco was excluded in 1982 from Food for Peace but included in a new program in 1984, the Export Credit Guarantee Program. This program was used to export US tobacco leaf and help US cigarette

companies penetrate Mideast markets of Iraq, Egypt, Turkey and Algeria. Over $188 million in credits were given under the program from 1984 to 1988.[4]

The high profits US cigarette companies make in the US provide needed capital to diversify at home into nontobacco areas and to acquire and build cigarette plants in the developing world. Philip Morris reported in 1989 that it will invest $2 billion in capital for its international tobacco operations over the next four years.[12]

Many tobacco companies in developing companies seek foreign funds and technology to modernize their industries. Yet, once the TTCs gain a foot in the door, market domination usually results.[7] Once a market is opened and the TTCS enter a number of changes occur. These include modernization of cigarette manufacture with the introduction of lighter, easy to inhale, American blended cigarettes. Introduction of these cigarettes may result in current smokers smoking more per day and nonsmoking women and children taking up the habit. The introduction of cigarette advertising and promotions on a massive scale are often targeted to young people who are easily enticed to experiment with the foreign brands.

Two years after the TTCs entered Japan television advertising increased ten-fold and in Taiwan, entry into discos popular with teens cost five empty packages of Winstons. In Japan there was a sharp increase in the number of retail outlets and price competitions between the Japanese monopoly and foreign companies. Women's cigarette brands, such as Virginia Slims, were introduced for the first time in Asia (where less than 10 percent of females smoke) after entry of the TTCs.[8,9]

The effects of these market changes in Asia have been seen in the increase smoking rates among Japanese females and Taiwanese and Korean teens. The Japanese market was opened in 1986 and from 1986 through 1991 smoking prevalence among Japanese females rose from 8.6% to 18.2%, and 27 percent of the 20-29 year old women currently smoke. Total cigarette consumption has risen 5 percent in Japan from 1989 to 1991. In Taiwan smoking rates rose 4 percent two years after the market was liberalized.[14] Neighboring Hong Kong and Singapore have adopted very stringent tobacco control policies and smoking rates among women have remained below 10 percent and overall consumption has fallen.

Public Health Policies and Restrictions on Tobacco Trade

In 1989 the world's international trade body, General Agreements on Tariff and Trade (GATT), was petitioned by the US to determine if Thailand's ban and tariffs on cigarette imports violated GATT articles. GATT ruled that trade policies applied only to foreign brands were discriminatory and inconsistent with GATT articles.[15] Yet, GATT also ruled that a variety of tobacco policies were consistent if applied to both foreign and domestic cigarettes. Policies cited by GATT included bans on advertising and promotions, restrictions on use, limits on tar and nicotine, taxes and other measures. GATT determined that nations have the right to limit trade of harmful substances for health reasons.

These policies serve the short term economic self interest of a state tobacco monopoly by freezing market share, and denying the foreigners the tools they need to enter. The same policies also promote the long term interest of the public health community to curb smoking over time.[7,11] The Thai decision was historic and is a major set back for the TTCs. The anger generated by the US trade threats generated considerable media attention in Thailand and made tobacco control a national cause. The fledging tobacco control movement gained political power and quickly passed laws banning advertising, raising taxes and restricting smoking in public places. Taiwan is pursuing similar legislation. Other recent events include a decision by the World Bank to eliminate support of tobacco agricultural projects from their loan programs.

The GATT decision and passage of Thailand's smoking control law came about through close cooperation between control public health activists in the US and Thailand. In summary, passage of smoking control policies in newly developed nations is essential to the prevention of future epidemic of smoking related diseases in these areas. Not only do policies maintain noncompetitive markets but based on the expansion in North America can sharply reduce consumption. Whether or not what Thailand has done will spread to other nations faced with similar threats is unknown. Success will be determined by what occurs in the foreign country as well as in the United States, the principal home of the TTCs. Adoption of a comprehensive smoking control policy by the United States is perhaps the most important action that can be achieved in the US. Strong US policies would reduce the economic and political power the US transnational tobacco companies by reducing profitability and the population of smokers. In turn, the industry's ability to dictate control over US trade policy will be weakened. Both the United States as well as the world would be healthier.

Recommendations

1. Congress should pass legislation to prohibit the USTR, the Departments of State and Commerce, or any other agency of the US government from actively encouraging, persuading or compelling any foreign government to expand the marketing of tobacco products whether it be by repealing of laws restricting marketing practices or securing agreements to introduce new measures or expand current ones. This applies to the promotion, advertisement, distribution and taxation of tobacco products.
2. Congress should use a fixed percentage of revenue collected through foreign tobacco sales to fund US federal agencies to provide technological assistance on smoking control and prevention to countries that import US tobacco. Areas of technological assistance to be considered could include, but not be limited to the following areas: smoking survey methodology, strategies to initiate cigarette excise tax and tobacco product hazard control legislation, and intervention strategies to control and prevent tobacco usage.
3. Congress should eliminate all funding for USDA programs that provide assistance or promote the export of tobacco and tobacco products and promote tobacco growing overseas.

4. Congress should amend federal laws governing the export of hazardous substances to include tobacco and tobacco products.

5. The World Health Organization (WHO) should significantly increase its funding of tobacco control projects, either by reallocation of existing funds, or by increased US funding of the organization. These project should include collaborative efforts by WHO and the Department of Health and Human Services (especially the National Cancer Institute and the Centers for Disease Control) in tobacco control technology exchange. Included in such efforts will be annual reports on tobacco control programs and their impact, development and maintenance of international, national and local tobacco control infrastructures, and training and exchange of information on effective tobacco control interventions (including policy media, educational and other program interventions) and data collection activities that support these interventions.

6. Congress and the Clinton administration should encourage GATT to eliminate subsidies for tobacco agriculture among member nations.

7. US and international health, voluntary and professional organizations: International and voluntary organizations should collaborate with WHO to provide a comprehensive annual update on tobacco-related data by country, including epidemiological data, policy information, local tobacco control infrastructure, and information on tobacco control programs in each country, including the status of the research regarding the environment. These same agencies should greatly expand their support of programs aimed at curbing tobacco use and track international tobacco control programs in developing countries.

8. UN affiliated agencies should adopt policies on programs that eliminate support for tobacco trade, manufacture, and marketing of tobacco and tobacco products and adopt new policies and programs to discourage tobacco use. These agencies include World Bank, IMF, UNICEF, and others.

9. US and international public and private agencies should encourage and provide resources to insure representation that is culturally diverse within each participating nation and inclusive of indigenous leadership in all efforts to develop and promote tobacco prevention and control initiative, conferences, and planning meetings.

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Building Coalitions for State and Local Tobacco Control Legislation

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Peter Fisher

Introduction

The pathogen that is the number one cause of death in the United States, responsible for the deaths of almost a half a million Americans every year, is not a microbe or an undiscovered virus. It is the tobacco industry.

The tobacco industry gets away with murder figuratively and literally because society acquiesces in this devastation. To change this situation, broad social changes, in general, and political and legislative actions, in particular, are necessary.

Therefore, the tobacco control movement must become expert in building coalitions and in passing legislation.

(For information on history or current situations regarding specific areas of tobacco control, for example women, taxes, protecting nonsmokers, etc, please see specific topic sections. This section addresses the processes of coalition building and passing legislation.)

Purpose

The goal of tobacco control is to save lives, to create individual and community experiences which foster self worth, cooperation, and participation in political and social processes, and to have fun. The award for elegance goes to those who save the most lives with the smallest expenditures of money and time.

The Players

The tobacco control movement is a dynamic and diverse grouping of organizations and individuals. This diversity is a source of strength and can also be, and has been at times, a source of weakness and division—a state of affairs that can only assist the tobacco industry. It is imperative that the various elements of the movement understand each others' roles and operating structures. Such understanding will lead to more and better cooperation at the federal, state and local level. Currently the tobacco control movement is made up of:

- individual activists—concerned citizens, well-credentialed professionals, legislators, and essentially single-person "nonsmokers' groups"
- state and/or local nonsmokers' groups

Note: the nonsmokers' advocacy movement is a true grassroots movement, comprised of city, county, region, or statewide groups, created and run by citizens. Organizations are independent (though many use the acronym GASP), with small budgets and staff (only Massachusetts, New Jersey, Minnesota, and Colorado have paid staff), and cooperation among them is high.

- national nonsmokers' groups (Americans for Nonsmokers' Rights, Action on Smoking and Health)
- local, state, and national units of Doctors Ought To Care (DOC): health professionals and others concerned about health promotion and disease prevention; and Stop Teenage Addiction to Tobacco (STAT)
- local, state, and national units of Cancer, Heart, and Lung Associations; their Coalition for Smoking OR Health in Washington, D.C.; medical societies, and public health organizations
- local, state, and national interagency councils on smoking; coalitions for legislation, ad hoc committees on particular issues or questions
- broad issue advocacy organizations, most notably the Advocacy Institute, and, lately, Public Citizen and Common Cause
- government organizations, particularly the new generation of professional, publicly-funded tobacco control specialists created in California by Prop 99, the Office on Smoking and Health, state and local health departments, governor's offices, etc.
- legislative caucuses.

Expanding the Tobacco Control Movement

To achieve a tobacco-free society all sectors of society must be involved, including children, schools, families, businesses, media, governments, and all kinds of organizations, including civic, religious, professional, etc. Recent successes include the rapid assembling of 100 organizations in the Coalition for a Healthy New Jersey (advocating increased cigarette and alcohol taxes), and the stunning victory of the Massachusetts tax increase initiative, accomplished by coalition of more than 250 member organizations.

These groups need to be included in tobacco control coalitions:

- businesses and business groups, including professional organizations
- government watchdog groups, taxpayer groups

- government organizations, such as mayors' groups
- fire departments, associations
- unions, labor networks
- Democratic and Republican party organizations
- medical specialty organizations, hospital associations, visiting nurses, mental health organizations, etc.
- health promotion organizations
- anti-alcohol and anti-drug communities
- law enforcement organizations
- laryngectomy groups, tobacco victims and survivors groups
- smokers for tobacco control
- self-help organizations, cancer survivors, environmentally-sensitive, disability groups
- educational organizations, professional and lay, including PTA, school boards associations, college consortiums, AAUW
- childhood welfare and protection organizations
- media associations, newspaper publishers
- AARP, other older people's groups
- civic groups, Kiwanis, Lions, Rotary
- charitable organizations
- environmental organizations, consumer groups
- fraternal organizations, Elks, Moose
- religious organizations, churches
- minority groups, ethnic, women, sexual identity
- youth groups, student councils, 4-H, scouts, SADD, college service fraternities, university students' groups
- sports groups, athletic conferences, Little League, Ys
- arts and cultural groups
- celebrities.

Working Together, Working Apart

Broad-based coalitions are almost unbeatable in tobacco control. When individuals and organizations are really determined to eliminate tobacco's toll, when they decide to devote appropriate time and resources to tobacco control (and obtain professional media and lobbying advice and advertising time), when each active individual and organization is allowed to make its own contribution, and when all are valued for their role, then the emphasis focuses on the goal and mutual respect is high. Small, underfunded coalitions, however, are limited in what they can accomplish. (For information on process, case studies, etc., see Resources for Action, below.)

Working separately may also be effective. A broad-based concern in society about smoking will ultimately involve large and small organizations, and traditional and activist organizations. (Activist groups are sometimes perceived as radical. Radical, derived from the Latin "radix", means root. Activists recognize that the root causes of tobacco's toll are the tobacco industry and social acquiescence. Activists tend to speak bluntly about this and to deal directly with it.)

Established and grassroots segments of society can play an effective game of "good cop, bad cop". Activists can articulate far-sighted goals, while organizations with impeccable reputations, like the American Cancer Society, can give respectability and marshall large resources. Traditional organizations speak with authority and grassroots groups have the authenticity of speaking for the people affected by tobacco. Each individual and organization has the right to set its own priorities which all should honor, albeit after enlightening discussion.

As more actors come into the movement, there will be more elbow room for individuals and organizations to find their niche. It will also be appropriate for more specialization to develop.

How to Lobby for Lives in Three Simple (But Not Necessarily Easy) Steps

1. Know the processes for legislation, regulation, and policy change.
2. Know and work with the players within legislative bodies, government organizations, businesses, community organizations, etc., responsible for change. Know the media and how to use them effectively. Know the role of the tobacco industry, the strategies it will try, and its allies. *Exposing the role of the tobacco industry, especially its political contributions, and making it unacceptable for legislators, corporations, and other sectors of society to collude with the tobacco industry must become a major focus for the tobacco control movement.* This has been done brilliantly in the past in Canada and in California. Recently The Advocacy Institute, Colorado GASP, Virginia GASP, Arizona GASP, Smokefree Pennsylvania, and some reporters have uncovered tobacco money's buying power. Know and use the strengths of the tobacco control movement.
3. Commit major resources.

Recommendations

Internal process

1. Educate national, state, and local units of prohealth organizations about the monumental health effects of tobacco use and the enormous influence of the tobacco industry. Recognize that media underreporting of this problem is a symptom of the problem and that even some health organization staff and volunteer board members and officers are often unaware that almost a half million Americans die annually from one pathogen—the tobacco industry. Education should include case histories of successes.

2. Organizations should examine their mission statements and the role of tobacco in blocking these objectives and should devote commensurate resources to tobacco control advocacy. They should employ methods which are most cost-effective. Training in advocacy skills, especially in lobbying techniques, media relations, and coalition building should be a priority for staff and volunteers. There should be national and state conferences annually on tobacco control legislation and there should be annual lobbying days at federal and state levels.

   National, state, and local medical societies, along with medical specialty societies, should actively participate with coalitions in effective tobacco control. The AMA should request yearly progress reports from its component organizations regarding each year's progress in state and local tobacco control, and the next year's priorities for activism.

   The tobacco control movement should acknowledge the importance of not only making recommendations but implementing them. The goal is not just to make recommendations, but to save lives.

3. There should be the widest possible recruitment into the tobacco control movement from all aspects of society, recognizing that this is a society-wide problem.

   Some organizations will not be involved in every issue, even though they share a common ultimate goal. Therefore, working groups may be formed around specific issues.

   The movement should become more sophisticated in understanding which segment of the tobacco control movement can best carry forward each issue. The tobacco control movement should acknowledge the important and unique role which each organization has to play.

   "Citizen spark-plugs"—effective grass roots activists —should be encouraged, supported, and rewarded as valued public citizens and the heart of the smoking control movement. The larger national voluntary organizations should continue to send, in writing, information to their state and local organizations encouraging them to work with local grass roots activist groups and to support them with resources (staff time, office space, supplies, materials, printing, etc.).

   In return, grass roots activist groups, which often have new and creative ideas and a deeper knowledge of the tobacco issue, should share their information and skills with national organizations, to educate and to activate.

Tactics

1. Legislators have a statutory and moral responsibility to protect the welfare of their constituents and to preserve the integrity of democratic government. Nothing else impacts as negatively on public well being as tobacco products and nothing else corrupts the representational legislative process as much as the tobacco industry. Legislators should refuse donations from the tobacco industry and its subsidiaries. State, county, and local organizations should seek non-tobacco dollars for sponsorship of events. In the words of Surgeon General Novello, "They should be a part of the solution, not a part of the problem."

2. In order to destroy the tobacco industry's attempts to gain public credibility and in order to further isolate the tobacco industry, tobacco control advocates should actively expose tobacco industry political contributions, lobbyists, "front" organizations, industry-fomented "grassroots" smokers' groups, and instances where tobacco industry lobbyists represent any other group in society.

   Tobacco control activists should recognize segments of society which have already been coopted by the tobacco industry, especially tobacco farmers, should anticipate that the tobacco industry will continue these activities, and should seek to bring these segments into the tobacco control movement or at least neutralize their opposition to tobacco control.

3. Actively oppose any legislation that preempts stronger local laws; that criminalizes minors for tobacco purchase, use or possession; that shields tobacco companies from product liability; or elevates smoking to protected "rights" category. These strategies protect the tobacco industry.

   Tobacco control advocates should be aware of bills which are represented as tobacco control measures but which contain these features and of last-minute legislative attempts to amend pending legislation with these provisions.

4. Actively involve children, women, minority groups, and tobacco victims and survivors in tobacco education and advocacy activities. These groups are special targets of the tobacco industry and these groups are effective advocates.

5. Utilize other public sector avenues such as regulations, executive orders, bureaucratic rules, and petitions to government to control the tobacco industry.

   Regulatory bodies may be more free of tobacco industry influence and may be made up of experts. However these bodies should be carefully monitored as the tobacco industry has a history of misusing them.

6. Local ordinances are highly recommended for a variety of reasons. They are locally appropriate and most enforcement is local. Opposition can usually be identified as coming from outside the community and from the tobacco industry. Local laws influence and support state legislation. Campaigns for local ordinances have great value in public education and in building the tobacco control movement.

7. Positive vocabulary should be used, describing the movement members as prohealth activists, and defining the tobacco control issue as health versus greed.

   Recognize and reward state and local leaders who oppose the tobacco industry and who support the tobacco control movement.

Resources for Action and Information

Legislative Approaches to a Smoke Free Society, by Hanauer, Barr, and Glantz, published by the American Nonsmokers' Rights (ANR) Foundation in 1986, remains a wonderful sourcebook. It is still available for $10; the Appendix (a telephone directory-size compilation of documents) can be photocopied for $30. ANR may be contacted at (510) 841-3032.

"Lobbying for Lives: Lessons from the Front" is a 30 minute video about the passage of the Canadian tobacco advertising ban by a coalition headed by the Non-Smokers' Rights Association and the Canadian Cancer Society. It is available from MediCinema Ltd., 131 Albany Avenue, Toronto, Ontario M5R3C5, Canada, phone (416) 977-0569. It costs less than $100 U.S.

"The Politics of Local Tobacco Control" by Samuels and Glantz (JAMA.1991;266:2110-2117).

Strategies to Control Tobacco Use in the United States: a blueprint for public health action in the 1990's, was published by the U.S. Dept. of Health and Human Services. The 300-page monograph is NIH Publication No. 92-3316

The Political Evolution of Anti-Smoking Legislation, a 100-page book based on six case studies, is document # R-4152-UCOP, available from RAND, 1700 Main Street, POB 2138, Santa Monica, CA 90407-2138, phone (310) 393-0411, for $10 plus $2 postage.

Americans for Nonsmokers' Rights is experienced in federal, state, and local legislation and regularly discusses the issues involved in their newsletter, ANR Update, and in position papers. They are an up-to-the minute, source for current information and strategy planning.

Other sources are Action on Smoking and Health (ASH), the Advocacy Institute, the Coalition on Smoking OR Health, DOC, local nonsmokers groups, and individual activists, especially John Slade, Stan Glantz, Joe Cherner, Greg Connolly, Joe DiFranza, and Bill Godshall.

State legislated actions on tobacco issues

Overview

A. Restrictions on smoking in public places

Forty-five states and the District of Columbia restrict smoking in public places in some manner. These laws range from simple, limited prohibitions such as restrictions on public transportation and in schools (West Virginia), to laws that limit or ban smoking in virtually all public places, including elevators, public buildings, health facilities, public conveyances, gymnasiums and arenas, retail stores and educational facilities (Minnesota). The most extensive clean indoor air laws include restaurants and private workplaces (New York). Of the states that limit or prohibit smoking in public places, 41 restrict smoking in the public workplace and 19 have extended those limitations to private sector workplaces.

B. Tobacco excise taxes

Cigarettes

Every state and the District of Columbia impose an excise tax on cigarettes. These taxes range from a high of 56¢ per pack in New York to a low of 2.5¢ per pack in Virginia.

Smokeless tobacco

Thirty-six states have excise taxes on smokeless tobacco products, including chewing tobacco and snuff. In most states, the excise tax is calculated as a percentage of the wholesale sales price to retailers, manufacturer's invoice price, or price at which the tobacco entered the state. Alabama and Arizona base their smokeless tobacco excise taxes on the weight of the tobacco package.

C. Age restrictions on sales of tobacco products

Forty-nine states and the District of Columbia restrict the sale of tobacco products to minors. One state—Montana—has not yet acted to prohibit the sale of tobacco products to young persons. New Mexico prohibits only the sale of smokeless tobacco to minors.

D. Restrictions on distribution of tobacco product samples

U.S. localities have taken the lead in restricting the distribution of tobacco product samples. At least twenty-eight cities now prohibit the distribution of tobacco product samples. States have been slower in addressing this issue. While many limit access of tobacco products to minors by prohibiting sales or furnishing, only 21 states have taken action to restrict the distribution of free samples. Minnesota and Utah totally ban the distribution of cigarettes, smokeless tobacco products, cigars, pipe tobacco or other tobacco products suitable for smoking. California prohibits the free distribution of tobacco products in public places. Iowa prohibits the free distribution of tobacco to persons under 18 and within 500 feet of a school, playground or other location normally populated by people under 18. Kansas prohibits the distribution of sample cigarettes. Nebraska prohibits the distribution of sample smokeless tobacco products. Arkansas, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Missouri, New Hampshire, New York, Oregon, Pennsylvania, Rhode Island, Wisconsin and Wyoming ban the free distribution of tobacco product samples to minors only.

E. Restrictions on sales of tobacco products in vending machines

Nineteen states and the District of Columbia restrict the sale of tobacco products in vending machines. Only one, Colorado bans the sale of smokeless tobacco products in vending machines. Six states, Alaska, Michigan, Nebraska, New York, Utah and Hawaii, ban sales from vending machines except for bars, private clubs with a liquor license and, in a few cases, workplaces that locate machines in adult-only areas. Nine states—Arkansas, Colorado, Indiana, Maine, Minnesota, Oregon, Ohio, Vermont, Wyoming, and the District of Columbia—restrict placement of vending machines simply to areas unaccessed by minors. Nineteen—

Arkansas, Colorado, Connecticut, Georgia, Indiana, Louisiana, Maryland, Massachusetts, Minnesota, Missouri, New Hampshire, Rhode Island, South Dakota, Texas, Utah, Vermont, Virginia, Wisconsin and Wyoming—require owners, operators, and/or supervisors of tobacco vending machines to post signs stating that minors are prohibited from making a purchase from that machine. New Jersey requires signs posted every place cigarettes are sold or displayed; the signs must say it is against the law to sell cigarettes to minors, punishable by a $250 fine. One state, Illinois, requires owners or operators of cigarette vending machines to post signs warning of the dangers of cigarette use during pregnancy. New Mexico restricts the placement of vending machines that sell smokeless tobacco products and requires the posting of signs on vending machines that dispense smokeless tobacco.

F. Licensing requirements

Forty-six states and the District of Columbia require the licensing of parties that sell tobacco products. Iowa, Kentucky, South Dakota and West Virginia do not require licensing of such parties. Licensing regulations vary among states, and range from requiring only distributors to have licenses (California) to requiring wholesalers, distributors, manufacturers and retailers to obtain licenses (Delaware). The licensing laws in Alaska, Florida, Nebraska and Nevada include a provision that penalizes a licensee who furnishes tobacco products to minors, with an additional penalty of revocation of the license for subsequent offenses.

G. Smoking protection laws

Regrettably, 27 states and the District of Columbia passed some form of smoking protection legislation between 1989 and 1992.

Legal Issues in Tobacco Control

Richard A. Daynard, JD

Background

This paper will discuss the nature, extent, and public health potential of various types of tobacco litigation, the threat presented by industry-sponsored litigation against courageous individuals and communities, as well as possible legislative action to maximize the public health benefits of tobacco litigation and to exploit regulatory opportunities opened up by the Supreme Court's decision in *Cipollone v. Liggett Group, Inc.*

The most widely known form of tobacco litigation, and the one with the most obvious potential for incapacitating the industry, is product liability. Tobacco products liability suits, like asbestos suits before them, have the potential to force cigarette manufacturers to increase prices dramatically, in order to cover their liabilities and attorneys' fees. Like an excise tax, these increases would result in substantial declines in smoking, especially among not-yet-addicted teenagers. Furthermore, the publicity surrounding individual cases has driven home the point to newspaper readers and talk-show listeners that cigarettes kill real people (like the plaintiffs), rather than just statistics. Even the tobacco industry's public relations "spin," that the plaintiffs should not be blaming the tobacco companies when they chose to smoke and assumed the risks, underlines the foolhardiness of smoking—hardly the point the industry would choose to be making.

Finally, the process of "discovering" and introducing at trial damaging documents from the files of the opposing party has already produced evidence that the cigarette manufacturers "entered into a sophisticated conspiracy" which "was organized to refute, undermine, and neutralize information coming from the scientific and medical community." This has hurt the industry's credibility in the political process, and excited the interest of criminal investigators. While punitive damages have not yet been assessed, this conduct would certainly justify awards large enough to threaten the viability of the industry.

The tobacco products liability approach has faced three principal hurdles. The first was the ironic legal claim by the tobacco industry that the Federal Cigarette Labeling and Advertising Act of 1965 actually protected them against lawsuits, by "preempting" most or all possible claims, including those based on deliberate deception as well as on failure to warn. The United States Supreme Court resolved this issue in its June, 1992 *Cipollone* decision, making clear that no claims arising before 1969 were preempted, that deliberate deception claims—whenever arising—are not preempted, and that even post-1969 failure-to-warn claims are preempted only to the extent that they claim the warnings should have been included in advertising, rather than in other communications to governments or consumers.

The second hurdle has been the expense and difficulty of bringing these cases, caused by the industry's policies of never settling, regardless of the merits of individual cases, and of doing everything possible to run up the plaintiff's bill. As one industry lawyer explained in an internal memorandum, "to paraphrase General Patton, the way we won these cases was not by spending all of Reynolds' money, but by making that other son of a bitch spend all his." In fact, while the cases are not easy or cheap, they need not be more difficult or expensive than other complex tort cases. While the plaintiffs' attorneys dismissed the landmark *Cipollone* case in Fall, 1992 at least partly for financial reasons, most of the financial burden was probably behind them. Their long battle on preemption had resulted in the largely-favorable Supreme Court decision, while the fruits of their burdensome "discovery" of industry documents are now available in a $125 package from the Tobacco Products Liability Project!

The third hurdle is the common-sense notion that smokers have only themselves to blame when their smoking causes disease. This perception ignores the facts that almost all smokers began as minors, almost all who continue smoking are demonstrably addicted, and almost all have been exposed to the tobacco industry's health disinformation campaign.

The Supreme Court's *Cipollone* decision has evened the playing field for tobacco litigation. Formerly, the industry could harp on the fact that the plaintiff continued to smoke long after the package warnings appeared, while the plaintiff was not able to refer to the industry's communicative misconduct after 1965. Many jurors accepted the industry's definition of the cases, as trials of the plaintiffs' conduct: "Should Rose Cipollone have sent her husband Tony out at night to buy her cigarettes?" "Should she have heeded Tony's admonitions to quit?" Now, plaintiffs' lawyers can point to the industry's ongoing fraudulent and reckless behavior and argue that "These guys are killers. Somebody has to stop them!" That is the strategy that will probably achieve a breakthrough.

A second form of tobacco litigation involves claims by nonsmokers, afflicted with diseases or conditions caused or exacerbated by ETS, against employers who permitted workplace smoking. The claims have taken various forms, including lawsuits seeking

injunctive relief under state or local laws restricting smoking, or under the common law; unemployment compensation claims where the employee left work to avoid ETS; workers compensation and disability claims, where the employee has suffered serious ETS-related health problems; retaliation and wrongful discharge cases, where the nonsmoking employee has been punished for his or her complaints; and handicap discrimination under the Rehabilitation Act of 1973 (now, the Americans with Disabilities Act). While the efforts to achieve injunctive relief have had spotty results, the other cases have in recent years generally been successful. Since employers, unlike cigarette manufacturers or even retailers, have no financial stake in permitting smoking, even the modest legal risk which employers who permit smoking have faced has been an important factor in persuading them to ban smoking.

The recent EPA report documenting a variety of health risks from ETS, including not only long-term lung cancer risks but also acute risks of severe exacerbation of symptoms among large numbers of current asthmatics, will strengthen the whole range of ETS litigation. In particular, since a substantial proportion of the population are asthmatics who cannot, or at least as a medical matter should not, be exposed to environmental tobacco smoke, the recently-implemented Americans with Disabilities Act (ADA) will present most employers with the situation in which one or more of their employees has a right to demand that the workplace be made accessible by being made smokefree. Since the ADA also applies to places of public accommodation, it may well be the vehicle for changing the national norm in restaurants, malls, etc. from "smoking permitted" to "smokefree".

Another type of tobacco lawsuit involves claims brought on behalf of minors against stores which illegally sell them tobacco products. The pioneering case, *Kyte v. Store 24, Inc.*, included claims that the two minor plaintiffs were addicted to nicotine as a result of the illegal sales, and that the store had committed a variety of torts as well as violating the Massachusetts Consumer Protection Act (which allows plaintiffs to recover attorneys' fees) in making these sales. The case was settled, with the store chain agreeing to require positive identification from young would-be tobacco customers. The settlement received national publicity, encouraging other stores to adopt restrictive sales policies. The Tobacco Products Liability Project has a grant from the Thrasher Research Fund to assist activists to bring similar actions in other states.

A fourth type of civil claim, which is currently being tested, seeks recovery for the economic losses which smokers incur, at least in part as a result of tobacco industry disinformation campaigns. The claim can be brought through either the simplest or the most complex of legal processes: in small claims court, by individuals seeking the costs of stop-smoking programs and devices, or as a class action on behalf of, eg, all smokers who have used nicotine replacement therapy in an effort to quit. The strengths of this claim, at least when restricted to financial assistance for quitting, are that there can be no doubt the plaintiff(s) is really addicted, no plaintiff can be accused of seeking a windfall, and it makes common sense that the manufacturer of an addictive substance is obliged to help its customers get unhooked.

Other claims have been brought for lung cancer caused by environmental tobacco smoke, for mesothelioma caused by inhaling asbestos fibers from the original Kent Micronite filters, for cigarette-caused fire injuries and deaths, and for harm caused by using tobacco products which have no warning labels, such as spitting tobacco (until 1986), duty-free cigarettes, roll-your-own tobacco, cigars, and pipe tobacco.

Federal criminal proceedings against tobacco executives are also under consideration, based on the evidence of fraudulent behavior educed in discovery in tobacco liability cases. Mail fraud, wire fraud, and RICO counts are possible. The United States Attorney General could also bring criminal claims based on the industry's deliberate use of tobacco-sponsored sports events to circumvent the ban on cigarette advertising on television. In many states, local district attorneys can use reckless endangerment statutes to pursue tobacco executives for the same type of fraudulent behavior, given that a fully foreseeable consequence of this behavior is the death of many of their customers. Recent newspaper reports and television documentaries, which have further documented fraudulent industry behavior through interviews with industry scientists, provide new leads and increase public pressure for criminal prosecutions.

Unfortunately, litigation can also be used by the tobacco industry for its own purposes. Vending machines operators have sued communities which ban cigarette vending machines or limit where they may be placed. Courts in Massachusetts, Maryland and Utah have rejected these challenges, but a Superior Court judge in New Jersey has bought the industry's argument that such restrictions implicitly violate state law by reducing the state's overall tax revenue! This and some of the positive decisions are under appeal, and most or all of the restrictions are likely to be upheld. The industry also threatens communities that attempt to limit abusive tobacco marketing techniques, as by banning sampling or refusing to rent city-owned advertising space for cigarette advertisements. Most of these threats are bluffs, since the industry has never challenged such a restriction in court, perhaps for fear of establishing a pro-health legal precedent which would encourage more such restrictions. In each instance the industry's principal threat is actually to force the community to spend substantial amounts of their scarce resources defending their public health policies in court.

A 1981 tobacco industry memo recommends attacking adverse research and, where possible, "attacking researchers themselves." In 1992 R.J. Reynolds saw an opportunity when the complaint in a California test case seeking to require Camel paraphernalia to bear the Surgeon General's warnings mentioned the three *JAMA* articles which had brought public attention to Joe Camel's popularity among young children. RJR subpoenaed the records of the authors of the articles, and subjected one of them to a two-day deposition. They then leaked some of the subpoenaed material to the *Winston-Salem Journal*, which published a

defamatory article using RJR's spin. This type of harassment may discourage less intrepid investigators from doing research likely to upset the tobacco industry.

Unfortunately, just as litigation is a two-way street, tobacco companies also use the legislative and regulatory processes to obtain immunity from serious regulation at lower levels in our governmental hierarchy. Thus, Congress preempted state and local lawmakers from requiring appropriate health warnings on cigarette packages, advertising, and promotions. This has not only inhibited product liability suits, but prevented states from carrying out their basic obligation to protect the health of their citizens. In the Fall of 1992, 27 state attorneys general petitioned Congress to remove this preemption. Similarly, action by OSHA to limit smoking in workplaces may have the legal effect of wiping out state and local workplace smoking restrictions throughout the country.

A similar relationship holds between state and local governments. Thus, local regulations are regularly attacked as explicitly or implicitly preempted by weaker state regulation. The tobacco industry has made preemption a centerpiece of its strategy for fighting local regulations, not only asserting the alleged preemptive effects of existing state laws in legal attacks (actual or threatened) against local actions, but promoting weak state laws for the very purpose of obtaining express preemptions of aggressive local regulations. In addition, the tobacco industry has obtained legislative grants of immunity for product liability suits in California and Texas, and lesser "relief" in other jurisdictions, under the cover of "tort reform."

A legislative agenda for tobacco control advocates therefore needs to include efforts to repeal or limit existing federal and state preemptions, as well as preventing the tobacco industry from obtaining new or expanded protections.

We can, however, go much farther. The *Cipollone* case established, among other things, (1) that sec. 1334(b) of the Federal Cigarette Labeling and Advertising Act, which preempts any "requirement or prohibition based on smoking and health... with respect to the advertising or promotion" of cigarettes, has no greater preemptive force with respect to the traditional forms of state or local regulations than it does with respect to claims in products liability cases; and (2) that this preemption is quite narrow, only affecting requirements that sellers provide additional health information in their advertising or promotion. Thus, state and local governments can require manufacturers, as a condition for permission to sell cigarettes in their jurisdictions, to furnish the governments with information over and above what appears on the package label, eg, about any studies they have done, commissioned, or know about regarding the health effects of smoking, or the effects of their marketing tactics on public attitudes and buying behavior. Furthermore, they can also condition this permission on the manufacturers' providing package inserts and/or an "800" number with detailed and accurate health information.

Finally, tobacco litigation can easily be pressed into the service of health care cost containment. A state legislature, or Congress, could enact a law declaring cigarette manufacturers liable regardless of fault for medical expenses and lost income of smokers who contract lung cancer and other cigarette-caused diseases. Then, the ordinary contractual provisions which permit health insurers to recover their expenditures from responsible third parties will permit them to sue the cigarette companies for their smoking-related expenses. Additional legal modifications could smooth this recovery process, as by permitting individual insurers to use statistical methods to combine all their smoking-related expenses in a single claim, and to recover from the six cigarette companies according to their market shares.

Recommendations

1. Enforce Federal Law

A. Americans with Disabilities Act (ADA): the Civil Rights Division of the Justice Department should issue guidelines recognizing that the ADA's requirement, that all places of public accommodation be accessible to asthmatics and to people with other pulmonary diseases or with cardiovascular diseases, requires in practice that these places be smokefree (or have separated and separately ventilated smoking sections). Similarly, the Equal Opportunity Employment Commission should commit itself to enforcing the ban on discrimination by employers against people with compromised pulmonary or cardiovascular functions who require a smokefree environment. Private suits by affected individuals to obtain access to places of public accommodation, and to obtain nondiscriminatory employment opportunities, should also be encouraged.

B. The Occupational Safety and Health Administration (OSHA) should proceed immediately to carry out its statutory mandate to prevent any employees from developing lung cancer or other diseases as a result of exposure to ETS. This will require a ban on smoking in all workplaces, except for completely separated and separately ventilated smoking areas which nonsmoking employees are never required to enter. Since OSHA regulations preempt most state and all local regulations, it is essential that OSHA not be permitted to take half-measures, which would in any event be inconsistent with its statutory duty.

C. The Department of Justice should promptly carry out its duty under the Public Health Smoking Act of 1969 and bring action against broadcasters and/or cigarette manufacturers which violate the prohibition against cigarette advertising on electronic media by using cigarette brand names or logos in connection with sporting events.

D. The Federal Trade Commission should promptly initiate proceedings under Sec. 5 ("unfair or deceptive acts or practices... affecting commerce") against tobacco product manufacturers who direct marketing at minors or who misrepresent, explicitly or implicitly, the safety of their products.

2. Repeal Legislation Providing Special Immunities for Tobacco Industry, and Resist New Immunities

A. Congress should promptly repeal 15 U.S.C. sec. 1334, the preemption provision of the Cigarette Advertising and Labeling

Act. It has served to inhibit major public health initiatives such as billboard bans, restrictions upon youth-oriented marketing, and product liability suits. Cigarette manufacturers should not enjoy this extraordinary exemption from state regulatory and judicial power.

B. State legislatures should repeal the custom-tailored exemptions and advantages incorporated in many recent "tort reform" acts, and should refuse to enact new ones regardless of the financial incentives offered.

3. State legislatures should adopt statutes holding tobacco companies liable on an no-fault basis for health care expenditures and lost earnings attributable to the use of tobacco products. The statutes should provide that proof of tobacco use beyond a specified threshold (eg 20 pack/years) and of a tobacco-related disease (eg lung cancer, oral-pharangeal cancer, or emphysema) establishes liability regardless of fault by either manufacturer or user. The statutes should also provide that third-party payers (eg Medicaid, Medicare, or Blue Cross/Blue Shield) shall have the right to recover their tobacco-related health care expenditures directly from the tobacco manufacturers, and that they may use statistical methods to estimate their total tobacco-related health care expenditures, as well as to estimate the market share of the various tobacco manufacturers. Such statutes will provide hard-pressed states and employers with a substantial measure of financial relief, as well as allocating these costs where they properly belong.

4. State legislatures should adopt statutes requiring tobacco manufacturers wishing to sell their products within the state to disclose to state health authorities, and through them to the public, all information in their possession relating to (a) ingredients in their product and the chemical analysis of the smoke, (b) adverse health effects of their product's use, (c) all research undertaken directly or indirectly by the manufacturers involving possible adverse health effects, and (d) the likely or intended effects of their marketing. These statutes should also require these manufacturers to disclose directly to consumer (a) through package inserts and through "800" numbers, all adverse health effects of using their product, as established by scientific consensus; and (b) through package labels, that the product may not be sold to minors. (The Supreme Court's decision in *Cipollone v. Liggett Group, Inc.* makes clear that these types of state regulations are indeed permissible.)

U.S. Agricultural Policy on Tobacco

Ann Meagher Northup

Introduction

The healthcare community believes strongly that all federal government policies related to tobacco must reflect the objectives set by former Surgeon General C. Everett Koop for a Smoke-Free Society by the Year 2000 and contained in the US Government's Healthy People 2000 Objectives relating to tobacco use. The federal government cannot, therefore, continue policies and programs that encourage and promote the growth of tobacco.

Unfortunately, the federal government's policies on tobacco remain inconsistent. On the one hand, the US government acknowledges that tobacco use is the single most preventable cause of death in the United States and through the US Public Health Service allocates funds for scientific research and public health education. On the other hand, policies of the US Department of Agriculture (USDA) assure that federal assistance and tax dollars support the growth and use of tobacco products.

Furthermore, the US trade representative has demanded that foreign markets be opened to the tobacco industry in opposition to the wishes of the foreign governments concerns about the health of their citizens.

Tobacco Production

Tobacco was an especially important crop in the early history of the United States. Even though it no longer holds its once significant economic position, it is still a vital agricultural commodity in the major producing regions. Today, tobacco is produced in 21 states and Puerto Rico. Six states—North Carolina, Tennessee, Kentucky, Virginia, South Carolina and Georgia—account for over 90 percent of the $2.34 billion in 1990 farm cash receipts from tobacco.

Approximately 137,000 farms produce tobacco (down from 179,000 in 1987), harvesting an estimated 763,000 acres in 1990 (up from 602,000 in 1987). Approximately 65 percent of US-grown tobacco is used for domestic manufacture and about 35 percent is exported. According to recent data from Philip Morris, over the past decade, lower trade barriers, weaker government monopolies and emerging market economies in the former Soviet block more than doubled the theoretical export market for U.S.-made cigarettes from about 40 percent to nearly 90 percent of the 5 1/2 trillion cigarettes consumed annually outside the US. Exports in 1991-92 totalled 173 billion cigarettes.

Overall, however, due to the lower demand for cigarettes in the US and the increase in the import of foreign tobacco, tobacco production is expected to fall in 1993.

Tobacco Consumption

US cigarette consumption in 1992 will decline for the eighth consecutive year. Americans smoked an estimated 506 billion cigarettes in 1991/92 (July-June), down from 600 billion in 1984. US tobacco output remains high. Estimated 1992 figures show an output of 685 billion cigarettes, a rise of 23 billion from 1984. Per capita consumption also fell from 3,446 in 1984 to approximately 2,600 in 1992.

The reasons for the decline include industry price hikes, excise taxes and a continuing societal norm against the use of tobacco as a result of the continuing mounting evidence of the dangers of smoking and the effects of environmental tobacco smoke (ETS). Only the use of snuff continues to rise, likely increasing for the fifth straight year in 1992.

The Tobacco Support Program

Tobacco is one of 15 agricultural commodities now receiving direct federal support. The USDA provides support and stability to tobacco makers through operation of a tobacco support program. Prices are supported and stabilized by means of nonrecourse loans in combination with marketing quotas.

Significant federal regulation of agriculture began in the 1930's. The current tobacco program has its origin in the Agricultural Adjustment Act of 1938, which provided for an average support price for each type of tobacco. The law made non-recourse government loans available through local cooperative associations to producers whose crops failed to bring a price from a private buyer above the support level. The government then charged interest on the loans while holding the tobacco until it could be sold profitably. Different classes of tobacco each had their own separately administered, but operationally similar, price support program.

In addition to price supports tobacco supply was also controlled through a national acreage allotment system. The Secretary of Agriculture would fix the total national acreage of tobacco every year. In the 1960s several changes were made in the supply control provision for the intra-county lease and transfer of allotments for flue-cured tobacco and the institution of poundage

quotas as a quantity restriction mechanism. These were the last major changes in tobacco programs until passage of the "No Net Cost Act of 1982."

Costs of the pre-1982 tobacco programs were significant. For example, if a local cooperative was unable to sell the tobacco it held as collateral for unpaid loans, the federal government bore all losses. By April, 1982, past losses totaled $57 million in unpaid loan principal. By the end of 1981, loan policies had cost the federal government $591 million in interest losses. Moreover, the administration of the pre-1982 program bore an additional cost of $13.1 million in 1981 alone.

Under the threat of legislative dissolution of the tobacco program in 1982, Congress passed the "No Net Cost Tobacco Program Act." The legislation imposed an assessment on growers for every pound of tobacco marketed with the borrowed funds. The money raised by assessments reimburses the government for any future financial losses from tobacco loans. In theory, except for administrative costs, the tobacco program was to be run at "no net cost" to the taxpayer. The administrative costs, however, are approximately $16.6 million annually.

In practice, "no net cost" hasn't stopped the red ink. The cumulative loss from price supports from FY 1933 to FY 1992 includes $644 million for tobacco, including $423 million for loan and inventory operations and $220 million for export payments. The cumulative total of realized losses of loan principal from 1933 through 1993 amounts to an estimated $398 million. Interest losses on tobacco loans show an estimated cumulative total of $319 million from FY33 to FY92.

The cost of other tobacco-related activities for the USDA for FY92 include $7.3 million for salaries, expenses, and support for seasonal tobacco inspectors employed by the USDA's Agricultural Marketing Service (AMS); 0.96 million for market news reports on auction sales activity; 0.24 million for the development and maintenance of grading standards applied by the inspectors; $5.2 million for economic analysis related to tobacco production and marketing; $5.4 million for health related research and $5.9 million (est.) in FY 1993 to subsidize producer premiums for all-risk crop insurance.

The grower assessment under the "no-net-cost" legislation was not expected to ever exceed one to two cents per pound since past losses were low. However, loan prices were legislated higher than market prices in the late 1970s and early 1980s, resulting in a large increase in imported tobacco. In fact, imports have risen from 13% of manufactured tobacco (1967-69) to 32% (1989-91). Further, the statutory limits on marketing quotas could only be reduced so much each year. This allowed production which continuously exceeded utilization and the surplus went under government loans. As stocks increased, so did the assessments until they reached 25 cents per pound for flue-cured and 30 cents per pound on burley in 1985.

The high assessments, declining market quotas, and accumulating surplus tobacco stocks created a crisis for tobacco growers and the federal tobacco program. In early 1986 Congress enacted legislation as part of the Consolidated Budget Reconciliation Act to lower tobacco loan prices by approximately 26 cents per pound.

Who Really Benefits, the Tobacco Industry or the Farmer?

Ironically, as it operates today, the tobacco support program benefits least the people it was designed to assist: small family farmers. Instead, the greatest benefits of this program are shared by tobacco allotment holders, 74 percent of whom do not grow tobacco. Allotment holders charge the small family farmer who wants to grow tobacco large sums of money for permission to lease their allotments. About 84 percent of all family farmers rent allotments, a cost that can increase production expenses by 30 percent to 650 percent.

The federal price support program also impacts the ability of the American farmer to compete with foreign tobacco. As a result of high American prices created by the price support system, foreign-grown tobacco now comprises 35 percent of all tobacco used by American manufacturers overall and 33 percent of all tobacco used by American manufacturers in their cigarettes. In 1969, only nine million pounds of foreign tobacco was imported. By 1983, 240,000 metric tons were imported, an increase of 1,900 percent.

This does not mean that our leaders should be unconcerned about the future of the tobacco farmer. In the last Presidential campaign, much was said about "family values." However "family values" is defined, our farm families epitomize the best. They are hard-working, self-motivated, and self-sufficient. Seeing them survive and prosper should be a concern to us all and an aggressive state and federal agricultural policy should reflect that concern. Furthermore, current agriculture policy is significant to those who are interested in the health issues regarding tobacco. By making farmers aware of the facts and supporting new agricultural policies, it is fairly easy to drive a wedge between the farmer and the tobacco industry and to diminish opposition to health initiatives and the political support of the framework for the tobacco industry.

Unfortunately, most politicians from the southern tobacco states have used their clout to blindly back the tobacco industry's agenda instead of truly helping the tobacco farmer. Their gamble is that if the fortunes of the industry are good, the farmers will also prosper. This is a rather errant assumption considering the difference in the current fortunes: the tobacco industry is experiencing rapid growth in sales and profits while the tobacco farmers have to pray for a couple of pennies annual increase in the price for a pound of tobacco.

As the demand for tobacco products changes, the tobacco companies have the best minds that money can buy to prepare their future strategies. From all indications, that future does not include the majority of American tobacco farmers. Who speaks for the future of the American tobacco farmer?

Most farmers are beginning to realize that the strength of today's tobacco industry is a result of current export levels. As the national demand for cigarettes declined, the domestic tobacco industry began diversifying. The national companies purchased food processing and distributing companies to replace lost tobacco business. While these ventures were—and are—compatible with tobacco, they are far less profitable.

The tobacco industry, by conveying to tobacco farmers that their futures are intrinsically linked to the Congressional delegations' commitment to tobacco, insures that these politicians do their bidding in order to be re-elected. It is easier for senators and representatives to go along with the tobacco industry than to convince the farmer that the industry's priorities are contrary to his best interest.

There are leaders in every tobacco state who excuse their failure to develop any viable alternatives by claiming that there is no other crop that can replace tobacco income. It will continue to be true if no new initiatives are begun. Our very inaction insures that there will continue to be an absence of viable alternatives. Make no mistake: the rocky, hilly terrain and the small size of many tobacco farms make it especially difficult to develop alternatives. The very people who represent farmers in many areas —the same ones who act as though the situation is hopeless— are failing to address the issue with any foresight. *It is time to turn them around.* Since the two may not have similar interests, do they represent the tobacco industry or the tobacco farmer?

Health versus Economy

The economic dependence on tobacco makes it difficult to pass health care legislation. The tobacco companies and the farm organizations with which they work promote the idea that any youth access bill, any increase in taxes, or any clean air measure will cause the price and demand for raw tobacco to decrease. Because the survival of so many farmers depends on tobacco, the political strategy of establishing an inverse relationship between health legislation and tobacco markets is very effective.

Before discussing the notion that policies which decrease cigarette consumption hurt the tobacco farmer, it is important to state emphatically that economic prosperity does not justify the promotion of tobacco products, regardless of the effect on farmers. In this country, *we do not recognize death as a fair exchange for prosperity or a higher standard of living.*

At the expense of the Tobacco Institute, Price Waterhouse conducted a study which concluded that the tobacco industry provides 800,000 jobs (including production, advertising, distribution, and legal services). The Center for Disease Control states that more than 400,000 people die each year as a result of tobacco use. This means one person must die each year to sustain two jobs. Put another way, at least twenty-two people must die to support the forty-four year career of a Phillip Morris employee. Surely, no one would argue that this is an acceptable trade-off. It is absurd for the tobacco industry to use lost jobs as a rationale for not saving lives.

Strategic Recommendations

As the summary of enacted legislation demonstrates, the tobacco program in the United States is composed of a few major provisions concerning the production and marketing of a variety of types of tobacco. Deregulating the tobacco support program requires that all these provisions be repealed or significantly reviewed. The policy issue before the public health community should not be whether federal financial assistance for the tobacco support program should be ended, but when—and how best to accomplish this task quickly and fairly.

There are several options to reduce or eliminate the federal government's role—and its expenditures—for regulating the tobacco program:

1. Eliminate the support and use the annual budget and appropriations process to phase out by the year 2000 these USDA expenditures for the tobacco support program, including:
   a. developing and maintaining inspection and grading standards for tobacco auction markets
   b. publishing market news reports on auction sales subsidizing producer premiums for all-risk crop insurance.
2. Use the annual budget and appropriations process to redirect USDA tobacco research and development activity towards crop options to replace tobacco.
3. Phase out budget support for administration of the "No Net Cost" program.
4. Phase out the price support and supply control/quota provisions for tobacco.
5. Require tobacco companies to divulge the content on each pack of cigarettes in terms of percentage of domestic and foreign tobacco used.
6. Raise the state and federal excise tax on tobacco and use the money to help tobacco farmers diversify or to purchase (for the purpose of retiring from use) a farmer's tobacco base. Further, the cigarette tax could be raised and dedicated to provide grants and low-interest loans to individual farmers for new farm equipment, irrigation systems, and industrial bonds to food processing and other non-tobacco companies. This has the double benefit of raising the price of cigarettes to discourage use, and could eliminate the usual source of political opposition in southern states to an excise tax on tobacco products.
7. Encourage state agriculture departments to adapt to deal with the obstacles to new crops. Rather than looking for "alternative" crops to replace tobacco, we should be thinking of "supplemental" crops while tobacco can still support the farm. The purpose is to make non-tobacco acreage more profitable. Distribution systems to help compensate for small farms, careful crop selection to overcome terrain and land problems, and food processing plants to raise the value of local products are worthy approaches.

8. It is important to add that since tobacco companies diversified, they own a wide variety of food processing companies. It is not unreasonable for the tobacco industry to locate its food processing plants in rural communities nearer to the tobacco farmers that provided the companies with their profits all these years.

Impact of Recommendations

Long term actions to phase out or eliminate the federal tobacco program will have several impacts. The direct consequences include the loss of income for quota owners from the lease of allotments. However, eliminating costly allotment payments will benefit the original intended recipients of tobacco support programs: small family farmers and their heirs.

Many observers speculate that the price of tobacco products will fall if federal support is phased out. They predict that lower prices will cause increases in the use of lower quality imports, in the use of all tobacco products, and in overall exports of tobacco products. Since the primary objective of eliminating the federal support program is health related—to reduce consumption of tobacco products—attention should be given to the issue of tobacco use.

Reduced costs will not necessarily increase use, because the actual cost of tobacco only contributes about six cents to the price of a pack of cigarettes. However, phasing out the tobacco support program should be accompanied by a comprehensive package of proposals to reduce the use of tobacco products (as contained in the legislative program of the Coalition on Smoking OR Health).

According to Kenneth E. Warner, writing in the *Journal of the National Cancer Institute*, "the program has an indirect political consequence that sustains tobacco consumption. The program remains a highly visible symbol of government ambivalence about tobacco, an ambivalence that diminishes the force of the health message. In fact, the demise of the program would dramatically alter the nature of tobacco agriculture in the US, would give way to smaller numbers of farmers and as a consequence, the number of voters directly involved in tobacco farming would plummet, and the artificially constructed constituency of allotment holders would evaporate."

The system tarnishes the image of a government committed to bettering the public's health. It impedes legislative progress towards a society free of tobacco-produced lung cancer, heart disease, and emphysema. Reading of the health-oriented literature on the tobacco subsidy suggests that, in large part, the health community is oblivious to this phenomenon. Southern block senators and representatives are not.

Developing phase-out options should include careful consideration of the impact on the small family farmer. The number, size and organization of tobacco farmers is likely to change as a result of a program phase out. This change, however, is not likely to be more dramatic than that which has occurred over the past 20 years as mechanized harvesting, bulk curing, and other technological innovations have made it possible to grow more and more tobacco on a single farm. Any phase-out program should include funding mechanisms to facilitate the farmer's transition away from direct support.

Assistance should be given to tobacco farmers who for business or other purposes elect to stop growing tobacco and to begin growing other crops. A user fee mechanism can eliminate the health community's concern about using federal revenue to support the growth of tobacco. Perhaps funds can also be earmarked from substantial federal, state and local cigarette excise tax increase towards this end.

Goals

To insure that the agricultural policies of the US are consistent with the tobacco related recommendations of the Healthy People 2000 objectives:

1. Diminish opposition to health initiatives by reducing the political power the tobacco industry exercises through its influence over tobacco farmers. This can be accomplished by:
   a. Reducing or eliminating tobacco acreage by diversification into other crops or land usage.
   b. Federal legislation and/or regulations to access funds in the "No Net Cost" program to be used for the purchase of tobacco bases or to provide grants and low-interest loans to tobacco farmers who are changing to new crops.
   c. Provide industrial bonds to food processing and other non-tobacco companies locating in tobacco-producing areas.
3. Eliminate use of federal tax revenues to administer the No Net Cost Tobacco Program and for USDA tobacco research and development.
4. Dedicate a portion of the higher state and federal excise tax on tobacco to provide grants and low-interest loans to individual farmers for new farm equipment, irrigation systems, etc.
5. Include in the content on each pack of cigarettes the percentage of domestic and foreign tobacco used.

Strategies

1. Educate the business writers of all major media on the fallacy of linking economic prosperity of rural southern states' tobacco farmers and health legislation in those states. Stress better coverage of the difference between the wealth of the tobacco industry and the struggle of the tobacco farmer.
2. Support a meeting between the Secretary of Agriculture and a representative of health to address these recommendations.
3. To identify tobacco state public officials and create a coalition who recognize the need for more consistency in government regarding tobacco and health policies.

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Nicotine Addiction

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Introduction

Despite an overwhelming body of scientific evidence implicating tobacco use as the chief avoidable cause of morbidity and mortality in our society, cigarette smoking continues to hold 25% of adult Americans within its grasp. This paradox can be explained in large part by the underlying determinant of continued smoking: nicotine addiction. This determinant also explains why 46 million Americans continue to smoke, when more than 70 percent of them report that they want to quit, and have made at least one unsuccessful attempt at overcoming their addiction.

The Impact of Public Policy on Nicotine Addiction

Public policy changes during the 1990s can markedly enhance our capacity to prevent and treat nicotine addiction. Central to achieving this goal is to recognize and classify nicotine addiction as a disease that responds to health professional treatment and warrants reimbursement. Specifically, reimbursement must be mandated for effective smoking cessation treatments including counseling by health care providers and payment for nicotine replacement (pharmacologic) treatment. At the federal level, Medicare and Medicaid should mandate coverage nationally for tobacco prevention and cessation interventions. Most importantly, these treatments should be a central component of any national health care reform program. Finally, clinical practice guidelines for the treatment of nicotine addiction must be established and promulgated.

Tobacco advertising and promotional activities have disproportionate influences on children and adolescents and contribute to the addictive nature of these products. Because of the uniquely toxic and highly addictive characteristics of tobacco, a total ban on all advertising and promotional activities should be implemented. Taxation is another effective way to limit nicotine addiction, particularly among children and adolescents. The Nicotine Addiction Workshop strongly endorses the conference recommendation of a two dollar per pack increase in the federal excise tax on cigarettes as one of the most effective means of preventing and treating nicotine addiction.

Policies that permit smoking in public places exacerbate the nicotine addiction problem in two ways—they condone the use of tobacco products, and they contribute to environmental tobacco smoke exposure among healthy non-smokers. Legislation mandating smoke-free environments will enhance efforts to control nicotine addiction and should be implemented locally, statewide, and nationally with effective enforcement provisions.

The Role of Research and Education in Combating Nicotine Addiction

Research to understand, prevent, and treat nicotine addiction is underfunded and limited in the United States. To correct this inequity, the NIH should mandate a larger proportion of national research dollars to combating nicotine addiction, commensurate with the health impact of tobacco use. A standing NIH review group/study section on tobacco use and nicotine addiction should be created.

The education of health care providers in the U.S. including physicians, dentists, nurses, psychologists, and others should include instruction, training, and clinical experience in effective methods to prevent and treat nicotine addiction. Currently, such activities are extremely limited, resulting in disappointingly low rates of health care provider intervention with patients who smoke. Approximately half of all smokers report not receiving advice to stop smoking from their physicians. Establishing smoking status as the new vital sign is one no-cost institutional change to promote the identification of smokers for clinical intervention.

Preventing Nicotine Addiction

While 1.3 million Americans successfully overcome their addiction to cigarettes each year, they are replaced by 1 million adolescents who start to smoke; that is, 3,000 children who become addicted to tobacco each day. Public policies that prevent youth from using tobacco products such as excise tax increases, a total ban on tobacco advertising and promotion, and smokefree environments are among the most effective ways to prevent the epidemic of nicotine addiction in our country.

Pairing Public Policy Changes with Treatment for Nicotine Addiction

As public policies increasingly place geographic, financial, and societal limitations on tobacco use, it is incumbent upon us to pair these appropriate actions with effective treatment options for individuals dependent upon nicotine. Many smokers today report a sense of helpless isolation, addicted to a product they would like to abandon but are unable to overcome without help. Recognition of nicotine addiction as a disease mandates a compassionate approach to treating this problem. This recognition also

allows for a carrot and stick approach to creating a smokefree society by the year 2000; the stick might include placing increasingly onerous limitations on smoking while the carrot provides effective treatment options for the majority of smokers who want to quit using tobacco. Policies which curb tobacco use should be paired with efforts to educate the public about the harms of tobacco use including counter-advertising, and to increase access to state-of-the-art treatments for the 46 million Americans who are current smokers and the 12 million who use spit (smokeless) tobacco products. The pairing of policy initiatives and treatment access will help to guard against the promotion of rabid intolerance, blaming those who use tobacco for the problem without providing them with effective means to overcoming their addiction to nicotine and ultimately make the greatest contribution to the nation's health.

Workshop recommendations

1. Guidelines for the effective treatment of nicotine addiction are long overdue. The AHCPR process needs to move ahead quickly with the following considerations:

   a) Clinical practice guidelines will need to recognize nicotine addiction as a highly heterogenous disorder, requiring a range of different treatments options. The treatment guidelines should consider adopting a stepped care model with treatment based on the severity of dependence, previous quitting experience, and needs for special attention to factors complicating tobacco cessation (eg, depression, chemical dependency, other health lifestyle risks).

   b) Special attention is needed regarding the treatment of nicotine addiction within selected populations including: those in which tobacco use rates are highest (Americans with the least education and income, Americans with the greatest levels of stress/distress/disadvantage), populations in which the risks are greatest (especially pregnant smokers), and populations which have long been underserved (minorities, adolescents).

   c) Training and certification standards for nicotine addiction treatment counselors should be adopted, recognizing the heterogeneity of treatment for this disorder, both in terms of intensity and type of health care providers. In 1993, clinicians treating nicotine addiction range from the primary care physician who utilizes the three minute National Cancer Institute's model, *How to Help Your Patients Stop Smoking*, to the dedicated nicotine addiction counselor, working exclusively on a tobacco dependence inpatient service. Continuing professional education in effective treatments of nicotine addiction should be encouraged or mandated by accreditation societies and boards for health care professions and institutions.

   d) Adopt institutional changes in the practice of medicine that highlight and promote intervention with patients who smoke or use other tobacco products. Specifically, adopt as a new standard of care the determination and documentation of tobacco use status as the new vital sign. This step will mandate that all patients who use tobacco are identified for clinical intervention.

   e) Promote the recognition of nicotine addiction as a chronic disease. As with other chronic diseases such as diabetes, hyperlipidemia, and congestive heart failure, nicotine addiction is characterized by periods of exacerbation and remission, and requires long term intervention by clinicians with the potential utilization of a number of treatment modalities over time. Only with the recognition of nicotine addiction as a chronic disease can we move beyond the current standard of care which focuses on one-stop, isolated interventions and unrealistic expectations of cure rates.

2. Appropriate reimbursement and insurance coverage for nicotine addiction treatment is essential to ensuring that this treatment is available to all individuals who use tobacco. Specifically:

   a) Nicotine addiction treatment warrants reimbursement for both counseling and nicotine replacement therapies. Medicaid, Medicare, government and private insurance companies must assure their subscribers that appropriate nicotine addiction treatment is reimbursable. Nicotine addiction treatment options should be a cornerstone of the proposed national health care reform program that will highlight preventive health interventions.

   b) Similarly, treatment for nicotine addiction for adults and adolescents should be a mandated component of every basic benefit package including the proposed national health care reform proposals. While primary prevention is the most effective means of obviating the need for nicotine addiction treatment, 3,000 youth in America still begin to smoke every day. Innovative nicotine addiction treatments appropriate for youth and adolescents should be provided to young people who are experimenting with or addicted to tobacco.

   c) Economic incentives and disincentives can promote both tobacco prevention and cessation. For example, a health insurance discount for nonsmokers and a surcharge for smokers would provide economic motivators to overcome nicotine addiction. These incentives and disincentives should be applied at the insurer, health care provider, and health care recipient level. As part of these incentives, the IRS should allow tax deductions for nicotine addiction treatment for individuals and corporations, a deduction that is currently denied, and simultaneously deny corporate tax deductions for expenditures on tobacco advertising and promotion.

   d) End the double standard that demands that prevention interventions achieve the gold standard of safety, efficacy, and cost-savings while every other medical and surgical treatment in the United States is only required to be safe and, sometimes, effective. Additionally, it is important to recognize that nicotine addiction treatment is a cost-effective means of expending limited health care resources and is an intervention that warrants reimbursement.

3. Tie all tobacco control mandates to mandated nicotine addiction treatments. Some examples follow:

a) Pair JCAHO standards with mandated nicotine addiction treatment for hospitalized patients who smoke and desire such treatment. As hospitals become smokefree, this is a unique opportunity to offer both inpatients and employees ongoing treatment options for their nicotine addiction. These smokefree policies should not exclude chemical dependency, psychiatric, or other selected units.

b) Proposed policies by OSHA regarding workplace standards for exposure to environmental tobacco smoke should be paired with nicotine addiction treatment options and recommendations for employees.

c) Legislation to make schools smoke-free should be paired with programs that insure students, faculty, and all school personnel increased access to state-of-the-art treatments.

d) Earmark some portion of tobacco excise tax revenues for the treatment of tobacco addiction, with special efforts to assure access to these treatments among low-income underserved populations.

4. Public understanding of nicotine addiction is limited and must be promoted through educational activities. These educational activities are essential in order to increase information regarding tobacco dependence and to provide motivation for smokers to quit. Public education is particularly important in the following areas:

a) Recognition of nicotine addiction as a treatable disease; that many users of tobacco may require or benefit from clinical assistance to successfully quit smoking.

b) Tobacco product information is limited and misleading. Specifically, a warning label on all tobacco products that specifically highlights tobacco as an addictive drug is needed. Information on the constituents of tobacco smoke, including toxins and detailed data on nicotine content, is needed. Specifically, we recommend a warning on tobacco products addressing the dangers of environmental tobacco smoke exposure.

c) Public recognition of nicotine as an addictive drug would be enhanced if the Food and Drug Administration appropriately regulated this substance, rather than exempt tobacco from such regulation as under current legislation.

5. The science of nicotine addiction needs to be advanced and deficiencies in our knowledge base must be addressed. Specifically:

a) There are areas of nicotine addiction which have not been adequately studied. These areas include understanding factors that promote the uptake of tobacco, effective matching of treatment interventions based on *a priori* patient characteristics, post-marketing assessments of nicotine replacement treatments, the role and safety of long-term nicotine replacement, the efficacy of innovative behavioral treatments and pharmaceutical adjuvants, the development of more effective interventions for pregnant women who smoke and the safety of nicotine replacement in this population, the safety of nicotine replacement therapy among patients with cardiovascular diseases, neurobiologic effects of early nicotine exposure, the tailoring of treatments for smokers with medical and/or psychiatric co-morbidity, treatments for spit (smokeless) tobacco addiction, and treatment cost-effectiveness.

b) Current NIH and other federal research agencies currently provide inadequate funding for the development of innovative and effective treatments for nicotine addiction. Specifically, there needs to be an increased focus on the behavioral sciences in relation to biomedical research when studying nicotine addiction. As specific suggestions, it is recommended that OSAP include a nicotine addiction component in its research efforts and that a standing NIH review group/study section on tobacco use and addiction be created.

Recommendations of Work Group on Women's Issues

1. Request an appropriate agency to coordinate an ongoing national women's centered smoking prevention and cessation program across the life cycle including research, policy and public information.

2. While recognizing the strides made in increasing gender and cultural representation, we recommend that Tobacco Control organizations reflect the populations they represent by including more women, racial and ethnic minorities in positions of policy and program development and implementation.

3. Call for funding agencies to request research on how tobacco affects women across the life cycle.

4. Request National Institutes of Health to include tobacco on the Women's Health Initiative.

5. Request that the tobacco control movement hold a briefing for legislatures and policy makers at all levels on women and tobacco issues.

6. Request that recommendations regarding tobacco excise taxes make certain that populations already heavily burdened by tobacco do not take on more increased burdens of tobacco cost.

7. Support and promote Health Care Reform packages with prevention components which focus on tobacco use prevention and reduction in women and girls.

8. Ask the Congressional Caucus on Women's Issues and other groups:

   a. To request the Federal Trade Commission to assess the impact of advertising and promotion targeted toward women and the amount of tobacco industry expenditures devoted to promoting tobacco use among women and girls.

   b. To request Women Infant Care (WIC) to prohibit smoking in WIC Clinics and provide cessation and educational materials that are culturally and gender appropriate.

Recommendations of Work Group on Children and Youth Issues

Excise Tax

*Federal tax of a minimum of $2.00 per pack.

*Military tax: Introduce a $2.00 per pack tax on the sale of tobacco products in military commissaries and exchanges stores with proceeds being delivered to support military morale, welfare, and recreation programs.

State tax: States should increase excise tax by at least $.25 per pack, tied to inflation. Possibly tie to increases in purchase of cigarettes.

Campaign Reform

Support efforts to reform congressional campaign financing, limiting PAC contributions and encouraging public financing.

Local or State Licensing

*Local governments should license and regulate tobacco vendors as they do alcohol.

Smokefree Environment for Children

*Federally funded programs for infants, children, and adolescents should be required to provide a smokefree environment since ETS is a Group A human carcinogen.

Public environments accessible to children should provide a smokefree environment.

*All schools, public and private, should be smokefree.

Drug Free School Zones should include tobacco.

Advertising and Promotion

Develop a national respository of information on tobacco advertising targeting youth and the development of related counterstrategies.

*National groups, including nontraditional partners, should petition the Justice Department and Federal Trade Commission (FTC) to enforce existing laws regarding tobacco advertising and promotion.

Petition owners of sports and cultural organizations to have smokefree sports and cultural facilities without tobacco advertising.

State and local organizations should provide tobacco free sponsorship of sports and cultural events.

No tobacco sponsored events should occur on government property or government funded facilities.

Community groups should work toward the elimination of public signage advertising tobacco.

The federal government should fund an aggressive paid counter-advertising campaign to discourage all youth tobacco use.

Access

Federal policy should establish, or provide incentives for states to adopt, age 21 as the minimum age for purchase of tobacco products. Provisions also should be made for strong enforcement of this age limit with meaningful penalties for violations, through licensing of tobacco retailers.

State and local governments should ban the sale of tobacco products through vending machines, without preempting local jurisdictions from enacting more stringent regulations.

*Federal regulations for the implementation of the new provisions related to tobacco of the Substance Abuse and Mental Health Block Grant (Synar Amendment) should be enforceable, effective, and not preempt local and state authorities or jurisdictions from adopting more stringent laws to reduce youth access to tobacco. Implementation of provisions should allow states/jurisdictions to use block grant funds for enforcement activities.

Federal, state, and local governments should effectively ban the distribution of free samples of tobacco products.

Research

Congress should significantly increase funding for research and diffusion (dissemination, adoption, implementation, and maintenance) of programs aimed at preventing and reducing tobacco use among children and youth.

Problems of special interest include smoking initiation and cessation among girls and young women, tobacco use among minorities, and use of smokeless tobacco by youth.

School Health

*The nation's schools should implement tobacco prevention programs within a comprehensive school health program that

includes effective curriculum, teacher training, smokefree facilities, and access to cessation programs for students and school employees.

Anti-Drug Programs

*Tobacco should be targeted by all Federal anti-drug programs involving children and youth.

Health Professions Education

Accrediting boards for health professional schools should require instruction in the prevention and control of tobacco use among children and youth.

Teacher Training

The National Council for the Accreditation of Teacher Education should require schools of education to provide instruction in comprehensive health education that includes tobacco use.

Tobacco Use Cessation

All federally funded programs and services for pregnant teenagers should provide an effective program of tobacco use cessation.

Congress should provide additional funding for all federally funded public health programs servicing children to use for effective programs of tobacco use cessation.

* Priority recommendations

Recommendations of Work Group on Minority Issues

1. Obtain appropriate data on tobacco consumption, and tobacco related morbidity and mortality for all minority groups. This should be pursued at both the federal and the state level. The geographical and cultural areas of extreme excess morbidity and mortality related to tobacco use should be delineated. These *chronic disaster areas* should be targeted with special federal, state, and local resources for tobacco control.
2. Aggressive counter-advertising strategies, both offensive and defensive, should be developed in those communities most heavily targeted by the tobacco industry for sales.
3. Minority communities should become empowered by developing leadership among children in the tobacco control effort, and by fostering local adult leadership as well, particularly in those communities with excess morbidity and mortality related to tobacco use.
4. Minorities should be included and actively participate in enacting all other tobacco related recommendations set forth by other tobacco control workshops.

   • Support of the $2/pack excise tax on tobacco products, which is most likely the single most influential factor in the reduction of tobacco use among minorities.

   • Support of comprehensive school-based education as a primary mode of prevention.

   • Enactment of worksite smokefree policies in those settings that would particularly impact minorities, such as those that are federally funded, which would serve as a major means of cessation and elimination of a primary source of environmental tobacco smoke among the minority community.

Recommendations of Work Group on Environmental Tobacco Smoke (ETS)

In determining where to direct efforts to regulate smoking, the following issues must be considered:

1. Each jurisdiction should take action to eliminate exposure to environmental tobacco smoke.
2. Each jurisdiction should take care to provide the most effective enforcement of the elimination of exposure to environmental tobacco smoke.

Recommendations

The following list of recommendations is in order of priority.

1. All jurisdictions should take action to protect children from exposure to environmental tobacco smoke. For example, we endorse the legislation proposed by Congressman Dick Dubin and Senator Frank Lautenberg which would require all federally-funded children's programs to establish and make a good faith effort to enforce a nonsmoking policy that protects children from exposure to environmental tobacco smoke.

   A. The Local and State governments should enact legislation requiring that agencies receiving government funds for providing services to children be 100 percent smokefree.

   B. The State legislatures and local school boards should enact regulations requiring all public elementary and secondary schools to be 100 percent smokefree in all areas of the campus.

   C. The Congress should enact legislation requiring all colleges and universities that receive federal funds to be 100 percent smokefree in all enclosed areas.

2. All jurisdictions should take action to protect workers and other people from exposure to environmental tobacco smoke.

   A. The Local governments should establish ordinances requiring the elimination of environmental tobacco smoke in all restaurants and other worksites.

   B. The State governments should establish a Clean Indoor Air Law without preemption of local mandates.

   C. The President should sign an executive order making enclosed federal workplaces, including all branches of the military and the Veterans Administration hospitals 100 percent smokefree to ensure that all employees are protected from exposure to environmental tobacco smoke. The Congress should institutionalize this policy by enacting legislation to protect employees from the hazards of environmental tobacco smoke and should extend this policy to cover all buildings in the Legislative and Judicial Branches.

   D. The Congress should enact legislation requiring all international airline flights by American carriers originating from or landing in the United States or its territories to be 100 percent smokefree, and the Department of Transportation should support and aggressively pursue international standards to make all international airlines 100 percent smokefree.

   E. OSHA should develop regulations covering smoking in the workplace, and should consider the importance of local norms in the effective enforcement of policies to protect nonsmokers.

3. Economic incentives for businesses to go smokefree should be developed.

   A. Tobacco control committees should work with insurers to acquaint them with the liability implications of environmental tobacco smoke exposure and encourage them to differentially rate worksites by their smoking policies for purposes of workers' compensation insurance.

4. Comprehensive school-based health education that incorporates tobacco issues should include the effects of environmental tobacco smoke and one's rights to a smokefree environment.

Recommendations of Work Group on Regulation of Tobacco Products

Introduction

Political maneuverings by the tobacco industry have closed off nearly all regulatory avenues for these most dangerous products. Cigarettes and other tobacco products are both the least regulated and most dangerous consumer product in the country.

The only existing potential authority to regulate tobacco products is that of the Food and Drug Administration (FDA). Indeed, FDA has been willing to regulate specific products when it became convinced that the manufacturer had intended a drug effect.

The coalition on Smoking OR Health has petitioned FDA to regulate so-called "low tar" cigarettes as drugs because of health claims in their advertising and has petitioned that certain brands targeted at women be regulated because of their promise of weight control.

Discussion in the workshop considered opportunities at both the Federal and State levels to regulate these products.

Recommendations

The Executive Branch should make the regulation of tobacco products—regulation of their manufacture, distribution, sale labeling, advertising and promotion—a priority in federal health care reform and other health policy initiatives.

FDA should use its existing authorities to regulate all "low yield" tobacco products as drugs under Sec. 201 of the Federal Food, Drug and Cosmetic Act.

Congress should enact specific statutory authorities which without question give the Food and Drug Administration the authority *and the resources* to regulate the manufacture, distribution, sale, labeling, advertising and promotion of tobacco products.

State

The nation's governors should make the regulation of tobacco products a priority in health policy initiatives.

States should use their drug authorities to regulate "low yield" tobacco products as drugs.

States should consider enacting specific statutory provisions which regulate the manufacture, distribution, sale, labeling, advertising and promotion of tobacco products as a class of drug. These new requirements should include full disclosures of ingredients and of information known to the manufacturers about the toxicity of the products as well as requirements that the manufacturers assist customers who want to quit.

States should ban billboards which advertise tobacco products.

States should use existing consumer protection authorities to regulate the manufacture, distribution, sale, labeling, advertising and promotion of tobacco products.

Public Health Community

The public health community should develop, support and maintain a resource library which would serve as a repository for information about the tobacco problem needed by policy makers and regulators.

Recommendations of Work Group on Excise Tax—Federal and State

1. Increase the federal cigarette excise tax by at least $2 per pack with an equivalent amount assessed on all other tobacco products.
2. Encourage states to increase state excise taxes by approximately $1 per pack with an equivalent amount assessed on all other tobacco products.
3. Once these nominal tax increases are attained, the *real*, inflation-adjusted, value should be at least maintained thereafter.

Recommendations of Work Group on Tobacco Marketing and Promotion

Proposals

1. Effectively pressure the government to enforce the existing law.

   A. Document the violation of the existing laws.

   B. Document the failure to enforce the existing laws.

2. Counter the tobacco industry's misinformation by educating the public.

   Develop a mechanism for an ongoing campaign to include:

   A. Counter the brand-name images promoted by the industry.

   B. Educate the public about the effects of tobacco use and the tactics of the tobacco industry.

   C. Educate the public about the need for restrictions on cigarette advertising and promotion.

   D. Expose those who enter agreements with the industry to promote tobacco.

3. The group restates its long-term commitment to eliminate exploitation by the tobacco industry through advertising and marketing. It is in America's best interest to:

   A. Take into account the dynamic nature of the industry and be broad enough to cover traditional forms of advertising and more recent trends like sponsorship, product placement, utilitarian items, etc. and learn from other countries where the industry has circumvented a ban.

   B. Recognize that there need to be a number of interim steps while any proposal for the elimination of tobacco marketing is debated. These include:

      1. The items mentioned in priorities 1 and 2.

      2. Interim steps that attack tactics which have the greatest impact on children, such as sports and music sponsorship, utilitarian items, state action, etc.

4. Eliminate the tax deduction on tobacco advertising.

5. State and local governments should be granted regulatory authority concerning tobacco advertising and promotion, ending the current Federal preemption.

6. Develop a mechanism or funding for current mechanisms to more effectively monitor and evaluate the tobacco industry's activities. Develop this research so we will have adequate data from which to develop strategies for the future.

7. Reject the tobacco industry's voluntary code in its current or any future form.

Challenges to Ourselves

1. Challenge leadership of our movement to develop a strategic plan for potential funding, and designate individuals and organizations to implement recommendations of each of the workgroups.

2. Identify and develop additional resources devoted to accomplishing the above.

3. Broaden the diversity of our group to include those being exploited by the tobacco industry.

4. Broaden our base of support in terms of numbers, meaning grassroots support.

5. Explore and assess the impact of warning labels in countries that require stronger labels.

6. Identify and develop leadership to implement recommendations and action steps.

Recommendations of Work Group on International Health and Tobacco Use

Discussion

The following recommendations were made by the group and are conditioned on the belief that any effort to curb tobacco trade and use internationally must begin with the US putting its own house in order and adopting comprehensive national tobacco control policies including high taxes, bans on advertising and promotion, effective health warning labels, youth access laws, classification of tobacco and tobacco products as hazardous substances, and clean air legislation.

Recommendations

1. Congress should pass legislation to prohibit the USTR, the Departments of State and Commerce, or any other agency of the US government from actively encouraging, persuading or compelling any foreign government to expand the marketing of tobacco products whether it be by repealing of laws restricting marketing practices or securing agreements to introduce new measures or expand current ones. This applies to the promotion, advertisement, distribution and taxation of tobacco products.

2. Congress should use a fixed percentage of revenue collected through foreign tobacco sales to fund US federal agencies to provide technological assistance on smoking control and prevention to countries that import US tobacco. Areas of technological assistance to be considered could include, but not be limited to the following areas: smoking survey methodology, strategies to initiate cigarette excise tax and tobacco product hazard control legislation, and intervention strategies to control and prevent tobacco usage.

3. Congress should eliminate all funding for USDA programs that provide assistance or promote the export of tobacco and tobacco products and promote tobacco growing overseas.

4. Congress should amend federal laws governing the export of hazardous substances to include tobacco and tobacco products.

5. The World Health Organization (WHO) should significantly increase its funding of tobacco control projects, either by reallocation of existing funds, or by increased US funding of the organization. These projects should include collaborative efforts by WHO and the Department of Health and Human Services (especially the National Cancer Institute and the Centers for Disease Control) in tobacco control technology exchange. Included in such efforts will be annual reports on tobacco control programs and their impact, development and maintenance of international, national and local tobacco control infrastructures, and training and exchange of information on effective tobacco control interventions (including policy media, educational and other program interventions) and data collection activities that support these interventions.

6. US and international health, voluntary and professional organizations: International and voluntary organizations should collaborate with WHO to provide a comprehensive annual update on tobacco-related data by country, including epidemiological data, policy information, local tobacco control infrastructure, and information on tobacco control programs in each country, including the status of the research regarding the environment. These same agencies should greatly expand their support of programs aimed at curbing tobacco use and track international tobacco control programs in developing countries.

7. Congress and the Clinton administration should encourage GATT to eliminate subsidies for tobacco agriculture among member nations.

8. UN affiliated agencies should adopt policies on programs that eliminate support for tobacco trade, manufacture, and marketing of tobacco and tobacco products and adopt new policies and programs to discourage tobacco use. These agencies include World Bank, IMF, UNICEF, and others.

9. US and international public and private agencies should encourage and provide resources to insure representation that is culturally diverse within each participating nation and inclusive of indigenous leadership in all efforts to develop and promote tobacco prevention and control initiatives, conferences, and planning meetings.

Recommendations of Work Group on State and Local Tobacco Control Battles

Internal Process

A. Educate state and local chapters of pro-health organizations about the monumental health effects of tobacco use and the enormous influence of the tobacco industry. Almost 500,000 deaths per year are caused by this industry. Education should include case histories of successes.

B. Organizations should examine their mission statements and the role that tobacco plays in blocking these objectives and should devote commensurate resources to tobacco control advocacy. They should employ methods which are most cost-effective.

National, state and local medical societies along with medical specialty societies should actively participate with coalitions in effective tobacco control policy.

The AMA should request yearly progress reports from its component organizations regarding each year's progress in state and local tobacco control, and the next year's priorities for activism.

The tobacco control movement should acknowledge the importance of not only making recommendations but implementing them. Our goal should not be only to make recommendations, but to save lives.

C. Recommend the widest possible recruitment into the tobacco control movement from all aspects of society, recognizing that this is a society-wide problem.

Some organizations will not be involved in every issue, even though we share a common ultimate goal. Therefore, working groups may be formed around specific issues.

Recommend that the movement become more sophisticated in understanding which segment of the tobacco control movement can best carry forward each issue. We should dedicate ourselves to acknowledging the important and unique role which each organization has to play.

Effective grass roots activists should be encouraged and rewarded as valued members of the smoking control movement. The larger national volunteer organizations should continue to send, in writing, information to their state and local organizations explaining how it would be in their best interest to work with local grass roots activists groups when possible, or to offer resources (staff time, office space, copying, etc.) when possible.

Grass roots activist groups very often have new and creative ideas and often a deeper knowledge of the tobacco issue and they should be willing, in return to pass this on to the national organizations and their local affiliates both to educate and to activate.

Tactics

A. Legislators have statutory and moral responsibility for the health and welfare of their constituents. No single issue so impacts negatively on health and welfare as tobacco-related disease.

We therefore urge legislators to refuse donations from the tobacco industry and its subsidiaries. State, county and local organizations should seek non-tobacco dollars for sponsorship of events.

B. In order to destroy the tobacco industry's attempts to gain public credibility and further isolate the tobacco industry, tobacco control advocates should actively expose tobacco industry political contributions, lobbyists, "front" organizations and cases where these tobacco industry lobbyists represent any other group in society.

Tobacco control activists should recognize that segments of society have already been coopted by the tobacco industry, especially tobacco farmers. We should anticipate that the tobacco industry will continue these activities. We should seek to bring the segments into the tobacco control movement or at least neutralize these groups.

C. We should actively oppose any legislation that preempts stronger local laws, that criminalizes children for tobacco purchase, use or possession, that shields tobacco companies from product liability or elevates smoking to protected "rights" category. These issues serve to protect the tobacco industry.

We recommend that tobacco control advocates be aware of "bogus" bills which contain these features or of last-minute legislative attempts to tag these on to other pending legislation.

D. Actively involve children, women, tobacco victims and survivors, and minority groups in tobacco education and advocacy

activities. These groups are special targets of the tobacco industry and these groups are very effective advocates.

E. We recommend in addition to legislation, tobacco control advocates utilize other public sector avenues such as regulations, executive orders, bureaucratic rules and petitioning government to control the tobacco industry.

Regulatory bodies may be freer of tobacco industry influence and may be made up of experts. However these bodies should be carefully monitored as the tobacco industry has a history of misusing them.

F. Local ordinances influence state legislation and have great value in public education and building the tobacco control movement.

G. We recommend positive vocabulary used describing ourselves as prohealth activists and defining the tobacco control issue as health vs. greed.

We recommend recognizing and rewarding state and local leaders who oppose the tobacco industry and support the tobacco control movement.

Recommendations of Work Group on Legal Issues in Tobacco Control

Enforce Federal Law

A. Americans With Disabilities Act—Civil Rights Division of the Justice Department should sue to enforce the requirement that all places of public accommodation be accessible to asthmatics and people with other pulmonary disease and with cardiovascular disease, i.e., that they be smokefree; and that the Equal Opportunity Employment Commission sue to enforce the ban on discrimination by employers against people with compromised pulmonary or cardiovascular functions who require a smokefree environment. Private suits by affected individuals to obtain access to place of public accommodation, and to obtain nondiscriminatory employment opportunities, should also be encouraged. Note that both types of suits are unambiguously supported by the language of the Act and of the accompanying regulations.

B. Occupational Safety and Health Administration (OSHA) should proceed rapidly to carry out its statutory mandate to prevent any employees from developing lung cancer or other diseases as a result of exposure to ETS. This will require a ban on smoking in all workplaces, except perhaps for completely separated and separately ventilated smoking areas. Since OSHA regulations preempt most state and all local regulations, it is essential that OSHA not be permitted to take half-measures, which would in any event be inconsistent with its statutory duty.

C. The Department of Justice should promptly carry outs its duty under the Public Health Smoking Act of 1969 and bring action against broadcasters and/or cigarette manufacturers which violate the prohibition against cigarette advertising on electronic media by using cigarette brand names or cigarette logos in connection with sporting events.

D. The Federal Trade Commission should promptly initiate proceedings under Sec. 5 ("unfair or deceptive acts or practices...affecting commerce") against tobacco manufacturers who direct marketing at minors or who misrepresent, explicitly or implicitly, the safety of their products.

2. Congress Should promptly repeal 15 U.S.C. Sec. 1334(b), the preemption provision of the Cigarette Advertising and Labeling Act. It has served to inhibit major public health initiatives such as billboard bans, restrictions upon youth-oriented marketing, and product liability suits. Cigarette manufacturers should not enjoy this extraordinary exemption from state regulatory and judicial power.

3. State legislatures should adopt statutes holding tobacco companies liable on a no-fault basis for health care expenditures and lost earnings attributable to the use of tobacco products. The statutes should provide that proof of tobacco use beyond a specified threshold (e.g. 20 pack/years) and of a tobacco-caused disease (eg. lung cancer, oral-pharyngeal cancer, or emphysema) establishes liability regardless of fault by either manufacturer or user. The statutes should also provide that third-party payers (e.g. Medicaid, Medicare, or Blue Cross/Blue Shield) shall have the right to recover their tobacco related health care expenditures directly from the tobacco manufacturers (under a "subrogation" theory), and that they may use statistical methods to estimate their total tobacco-related health care expenditures, as well as to estimate the market share of the various tobacco manufacturers. Such statutes will provide hard-pressed states and employers with a substantial measure of financial relief, as well as allocating these costs where they properly belong.

4. State legislatures should adopt statutes requiring tobacco manufacturers wishing to sell their products within the state to disclose to state health authorities and, through them, to the public all information in their possession relating to (a) ingredients in the product and the chemical analysis of the smoke, (b) adverse health effects of the product's use, (c) all research undertaken directly or indirectly by the manufacturers involving possible adverse health effects; and (d) all research known to the manufacturer involving the likely or intended effects of their marketing. These statutes should also require these manufacturers to disclose directly to consumers (a) through package inserts and through "800" numbers, all adverse health effects of using their product, as established by scientific consensus; and (b) through package labels, that the product may not be sold to minors. The Supreme Court's recent decision in *Cipollone v. Liggett Group, Inc.* makes clear that these types of state regulation are indeed permissible.

5. (a) Federal prosecutors should vigorously pursue indictments against those tobacco executives and attorneys who have participated in conspiracies to fraudulently misrepresent the state of knowledge regarding tobacco use and health, as well as misrepresenting the scope and purpose of the research they

are conducting. Mail fraud, wire fraud, and Racketeer-Influenced Criminal Organization statutes provide legal bases for such indictments.

(b) State and local prosecutors should vigorously pursue indictments of tobacco companies, organizations, and executives for recklessly endangering the health and lives of citizens by misrepresenting the state of knowledge as to the dangers of their products. Manslaughter indictments are also possible, but the crime of reckless endangerment, which exists in many states, does not require the prosecutor to connect the defendants' actions with any specific victim's disease or death.

6. Congress should undertake an investigation into misrepresentations which were made by the tobacco industry to Congress and the general public with respect to the industry's knowledge and activities regarding smoking and health.

7. Legal protection of minors:

(a) Encourage state legislatures to pass statutes enabling parents to sue retailers who sell cigarettes to their minor children.

(b) Encourage legal actions seeking injunctive relief against day-care centers, fast-food restaurants, schools, and other indoor establishments frequented by minors, to require them to forbid smoking.

(c) Encourage child advocacy groups and family court judges to construe child protection statutes to include children who suffer from serious pulmonary disorders (e.g. asthma) and continue to be exposed to ETS at home.

8. Provide financial as well as moral support to researchers whose work is attacked by the tobacco industry.

9. Support ongoing research into a wide range of legal actions against tobacco companies, including cigarette fire cases, asbestos/tobacco synergy cases, cases involving environmental tobacco smoke exposure, and medical costs associated with smoking cessation.

10. Support a clearinghouse and a legal backup center for local governmental bodies which have passed or are contemplating tobacco control measurers and which face legal attacks by the tobacco industry.

Recommendations of Work Group on Agricultural Policy

Strategic Recommendations

As the summary of enacted legislation demonstrates, the tobacco program in the United States is composed of a few major provisions concerning the production and marketing of a variety of types of tobacco. Deregulating the tobacco support program requires that all these provisions be repealed or significantly reviewed. The policy issue before the public health community should not be whether federal financial assistance for the tobacco support program should be ended, but when—and how best to accomplish this task quickly and fairly.

There are several options to reduce or eliminate the federal government's role—and its expenditures—for regulating the tobacco program.

Impact of Recommendations

Long term actions to phase out or eliminate the federal tobacco program will have several impacts. The direct consequences include the loss of income for quota owners from the lease of allotments. However, eliminating costly allotment payments will benefit the original intended recipients of tobacco support programs: small family farmers and their heirs.

Many observers speculate that the price of tobacco products will fall if federal support is phased out. They predict that lower prices will cause increases in the use of lower quality imports, in the use of all tobacco products, and in overall exports of tobacco products. Since the primary objective of eliminating the federal support program is health related—to reduce consumption of tobacco products—attention should be given to the issue of tobacco use.

Reduced costs will not necessarily increase use, because the actual cost of tobacco only contributes about six cents to the price of a pack of cigarettes. However, phasing out the tobacco support program should be accompanied by a comprehensive package of proposals to reduce the use of tobacco products (as contained in the legislative program of the Coalition on Smoking OR Health).

According to Kenneth E. Warner, writing in the *Journal of the National Cancer Institute*, "the program has an indirect political consequence that sustains tobacco consumption. The program remains a highly visible symbol of government ambivalence about tobacco, an ambivalence that diminishes the force of the health message. In fact, the demise of the program would dramatically alter the nature of tobacco agriculture in the US, would give way to smaller numbers of farmers and as a consequence, the number of voters directly involved in tobacco farming would plummet, and the artificially constructed constituency of allotment holders would evaporate."

The system tarnishes the image of a government committed to bettering the public's health.

It impedes legislative progress towards a society free of tobacco-produced lung cancer, heart disease, and emphysema. Reading of the health-oriented literature on the tobacco subsidy suggests that, in large part, the health community is oblivious to this phenomenon. Southern block senators and representatives are not.

Developing phase-out options should include careful consideration of the impact on the small family farmer. The number, size and organization of tobacco farmers is likely to change as a result of a program phase-out. This change, however, is not likely to be more dramatic than that which has occurred over the past 20 years as mechanized harvesting, bulk curing, and other technological innovations have made it possible to grow more and more tobacco on a single farm. Any phase-out program should include funding mechanisms to facilitate the farmer's transition away from direct support.

Assistance should be given to tobacco farmers who for business or other purposes elect to stop growing tobacco and to begin growing other crops. A user fee mechanism can eliminate the health community's concern about using federal revenue to support the growth of tobacco. Perhaps funds can also be earmarked from substantial federal, state and local cigarette excise tax increase towards this end.

Goals

To insure that the agricultural policies of the US are consistent with the tobacco related recommendations of the Healthy People 2000 objectives:

1. Diminish opposition to health initiatives by reducing the political power the tobacco industry exercises through its influence over tobacco farmers. This can be accomplished by:

   a. Reducing or eliminating tobacco acreage by diversification into other crops or land usage.

b. Federal legislation and/or regulations to access funds in the "No Net Cost" program to be used for the purchase of tobacco bases for the purpose of permanent retirement or to provide grants and low-interest loans to tobacco farmers who are changing to new crops.

c. Provide industrial bonds to food processing and other non-tobacco companies locating in tobacco-producing areas.

3. Eliminate use of federal tax revenues to administer the No Net Cost Tobacco Program and for USDA tobacco research and development.

4. Dedicate a portion of the higher state and federal excise tax on tobacco to provide grants and low-interest loans to individual farmers for new farm equipment, irrigation systems, etc.

5. Include in the content on each pack of cigarettes the percentage of domestic and foreign tobacco used.

Recommendations of Work Group on Nicotine Dependence

I. Treatment of Nicotine Addiction-AHCPR Needs to Move Ahead With:

1. Standards of Care (Guidelines) for Nicotine Dependence

   A. Nicotine dependence is a highly heterogenous disorder requiring a range of different treatments.

   B. Stepped Care/based on severity of Dependence

   C. Special attention to treatment of special groups including: low socioeconomic status (SES), disadvantaged, underserved, understudied, nd adolescent groups (youths).

   D. Standards for treatment counselors.

2. Make tobacco use a vital sign (physicians and other health care providers).

II. Reimbursement and Insurance Policy for Nicotine Dependence Treatment

1. Nicotine dependence treatment requires reimbursement for counseling and treatment interventions (Medicaid, Medicare, Government insurance and private insurance companies).
2. Treatment for Nicotine Dependence should be a part of every basic benefit package.
3. Create economic incentives and disincentives for patient/provider/insurer-payor mechanisms to promote tobacco prevention and cessation. As part of these incentives the IRS should allow tax deducations for nicotine dependence treatment for individuals and corporations.
4. Endorse a range of qualified providers, and continue professional education.
5. End double standard mandating prevention as only treatment that is cost-saving.

III. Tie Tobacco Control Mandates to Mandated N.A. Treatment

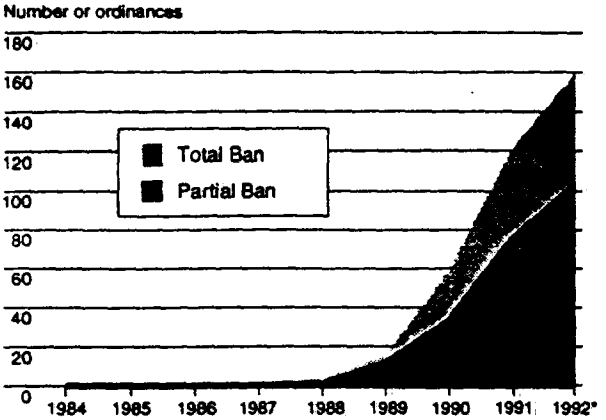
1. Pair JCAHO standards and Nicotine Dependence Treatment. As hospitals become smokefree more chemical dependency units should also become smokefree, as well as offering both inpatients and employees treatment options.
2. Action taken by OSHA regarding workplace standards for exposure to ETS should be paired with nicotine addiction treatment recommendations.
3. Pair curbing youth/adolescent quitting services with access (mandated N.A. treatment).

State Cigarette Excise Tax

State	Tax per pack (cents)	State	Tax per pack (cents)
AL	16.5	MO	13
AK	29	MT	18
AZ	18	NE	27
AR	34.5	NV	35
CA	35	NH	25
CO	20	NJ	40
CT	47	NM	21
DE	24	NY	56
DC	65	NC	5
FL	33.9	ND	44
GA	12	OH	24
HI	60	OK	23
ID	18	OR	28
IL	30	PA	31
IN	15.5	RI	37
IA	36	SC	7
KS	24	SD	23
KY	3	TN	13
LA	20	TX	41
ME	37	UT	26.5
MD	36	VT	18
MA	51	VA	2.5
MI	25	WA	54
MN	48	WV	17
MS	18	WY	12

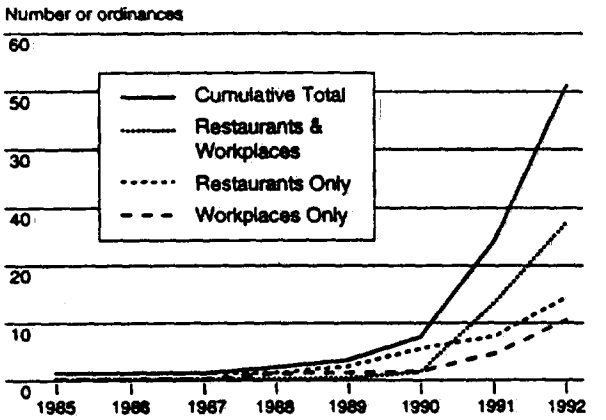
Tobacco Control Ordinances

Local Vending Machine Ordinances in the US
Cumulative by Year of Enactment



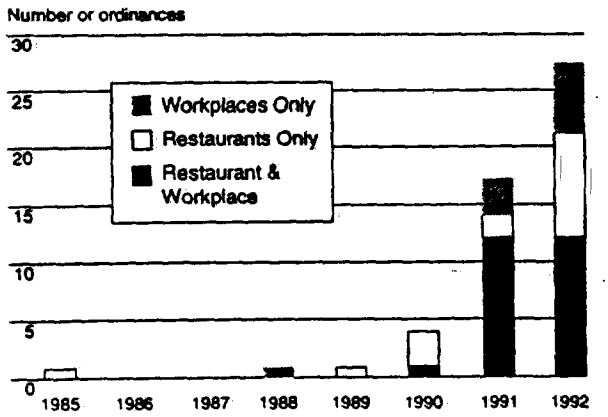
Source: Americans for Nonsmokers' Rights. Used with permission.
* Through September, 1992.

100% Smokefree Ordinances
Cumulative by Year of Enactment



Source: Americans for Nonsmokers' Rights. Used with permission.

100% Smokefree Ordinances
By Year of Enactment



Source: Americans for Nonsmokers' Rights. Used with permission.

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